S. Hrg. 100-630

COLORADO UTE WATER SETTLEMENT BILL

JOINT HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

AND THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

FIRST SESSION

ON

S. 1415

TO FACILITATE AND IMPLEMENT THE SETTLEMENT OF COLORADO UTE INDIAN RESERVED WATER RIGHTS CLAIMS IN SOUTHWEST COLORADO

DECEMBER 3, 1987
WASHINGTON, DC

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COLORADO UTE WATER SETTLEMENT BILL

THURSDAY, DECEMBER 3, 1987

U.S. Senate,
Select Committee on Indian Affairs, and
Committee on Energy and Natural Resources,
Subcommittee on Water and Power,
Washington, DC.

The committees met, pursuant to notice, at 9:13 a.m., in room 562, Dirksen Senate Office Building, Hon. Timothy E. Wirth (acting chairman of the Subcommittee on Water and Power) presiding.

Present from the Select Committee on Indian Affairs: Senators Inouye and Evans.

Present from the Subcommittee on Water and Power: Senators Bradley, Wirth, and Evans.

Also present: Senator Bingaman.

STATEMENT OF HON. TIMOTHY WIRTH, U.S. SENATOR FROM COLORADO

Senator Wirth. The joint committees will come to order.

The hearing this morning is a joint hearing of the Senate Select Committee on Indian Affairs and the Water and Power Subcommittee of the Senate Energy and Natural Resources Committee.

The bill before us, S. 1415, represents a comprehensive settlement of the water rights claims of the Southern Ute and Ute Mountain Indian Tribes of Colorado. I am a co-sponsor of this legislation which is the outgrowth of years of difficult negotiations between the State of Colorado, the U.S. Department of the Interior, the two tribes, and the local water districts.

It incorporates both a settlement of the tribes' claims in a cost sharing agreement for the construction of the Animas-La Plata project and completion of the Dolores project. The local share is 38 percent, a high figure when compared with similar settlement agreements.

The cost sharing agreement was required by Congress in 1985. The administration insisted that it also be part of the Indian water rights settlement negotiations.

Construction of the projects will make it possible to provide sufficient water to meet the needs of the tribes and the needs of the local water users. The bill also calls for the establishment of a fund for the development of tribal water resources. The State of Colorado will contribute $5 million to the fund and will also build a pipeline for domestic water.

The Town of Towaoc, headquarters of the Ute Mountain Indian Tribe, has been trucking its domestic water for over 40 years.

We will hear from many witnesses who will express diverse views on the bill. However, I want to emphasize that the signatory parties to the agreement, namely, the tribes, the State of Colorado, the local water districts, and the Department of the Interior remain firmly committed to passage of the legislation, provided that certain amendments are incorporated that I am told are agreeable to all parties.

[The text of S. 1415 follows:]

II

100TH CONGRESS
1ST SESSION

S. 1415

To facilitate and implement the settlement of Colorado Ute Indian reserved water rights claims in southwest Colorado, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 24 (legislative day, JUNE 23), 1987

Mr. ARMSTRONG (for himself, Mr. WIRTH, Mr. DOMENICI, and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

JULY 9 (legislative day, JUNE 23), 1987

Ordered, referred jointly to the Select Committee on Indian Affairs and the Committee on Energy and Natural Resources

---

A BILL

To facilitate and implement the settlement of Colorado Ute Indian reserved water rights claims in southwest Colorado, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

That this Act may be cited as the "Colorado Ute Indian Water Rights Settlement Act of 1987".

SEC. 2. FINDINGS.

The Congress finds that—

(1) The Federal reserved water rights claims of the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe are the subject of existing and prospective lawsuits involving the United States, the State of Colorado, and numerous parties in southwestern Colorado.

(2) These lawsuits will prove expensive and time consuming to the Indian and non-Indian communities of southwestern Colorado.

(3) The major parties to the lawsuits and others interested in the settlement of the water rights claims of the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe have worked diligently to settle these claims, resulting in the June 30, 1986, Binding Agreement for Animas-La Plata Project Cost Sharing which was executed in compliance with the cost sharing requirements of chapter IV of Public Law 99-88 (99 Stat. 293), and the December 10, 1986, Colorado Ute Indian Water Rights Final Settlement Agreement.

(4) The Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe, by resolution of their respective tribal councils, which are the duly recognized governing bodies of each Tribe, have approved the December 10, 1986, Agreement and sought Federal implementation of its terms.

(5) This Act is required to implement portions of the above two agreements

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) The term "Agreement" means the Colorado Ute Indian Water Rights Final Settlement Agreement dated December 10, 1986, among the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, the United States, and other participating parties.

(2) The term "Animas-La Plata Project" means the Animas-La Plata Project, Colorado and New Mexico, a participating project under the Act of April 11, 1956 (70 Stat. 105; 43 U.S.C. 620; commonly referred to as the "Colorado River Storage Project Act") and the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. 1501 et seq.).

(3) The term "Dolores Project" means the Dolores Project, Colorado, a participating project under the Act of April 11, 1956 (70 Stat. 105; 43 U.S.C. 620; commonly referred to as the "Colorado River Storage Project Act"), the Colorado River Basin Project Act (82 Stat. 885; 43 U.S.C. 1501 et seq.), and as further authorized by the Colorado River Basin Salinity Control Act (98 Stat. 2933; 43 U.S.C. 1591).

(4) The term "final consent decree" means the consent decree contemplated to be entered after the date of enactment of this Act in the District Court, Water Division No. 7, State of Colorado, which will implement certain provisions of the Agreement.

(5) The term "Secretary" means the Secretary of the Interior.

(6) The terms "Tribe" and "Tribes" mean the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, or both Tribes, as the context may require.

(7) The term "water year" means a year commencing on October 1 each year and running through the following September 30.

SEC. 4. PROJECT RESERVED WATERS.

(a) Water From Animas-La Plata and Dolores Projects.—The Secretary is hereby authorized to use water from the Animas-La Plata and Dolores Projects to supply the project reserved water rights of the Tribes in accordance with the Agreement.

(b) Application of Federal Reclamation Laws.—With respect to the project reserved water supplied to the Tribes or their lessees from the Dolores and Animas-La Plata projects, Federal reclamation laws shall not apply to those project reserved waters except to the extent that those laws may also apply to the other reserved waters of the Tribes. Federal reclamation laws shall not be waived or modified by this subsection insofar as those laws are required to effectuate the terms and conditions contained in article III, section A, subsection 1 and 2, and Article III, section B, subsection 1, of the Agreement.

SEC. 5. TRIBAL WATER USE CONTRACTS.

(a) GENERAL AUTHORITY.—Subject to the approval of the Secretary and to the provisions of its constitution, each Tribe is authorized to enter into water use contracts to sell, exchange, lease, or otherwise temporarily dispose of water in accordance with Article V of the Agreement, but the Tribes shall not permanently alienate any water right. The maximum term of each such water use contract, including all renewals, shall not exceed 50 years in duration.

(b) APPROVAL BY SECRETARY.—(1) The Secretary shall approve or disapprove any water use contract submitted to him within 180 days after submission or within 60 days after any required compliance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) whichever is later. Any party to such a contract may enforce the provisions of this subsection pursuant to section 1361 of title 28, United States Code.

(2) In determining whether to approve or disapprove a water use contract, the Secretary shall determine if it is in

the best interests of the Tribe and, in this process, the Secretary shall consider, among other things, the potential economic return to the Tribe and the potential environmental, social, and cultural effects on the Tribe. The Secretary shall not be required under this paragraph to prepare any study regarding potential economic return to the Tribe, or potential environmental, social, or cultural effects, of the implementation of a water use contract apart from that which may be required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(3) Where the Secretary has approved a water use contract, the United States shall not thereafter be directly or indirectly liable for losses sustained by either Tribe under such water use contract.

(c) SCOPE OF AUTHORIZATION.—The authorization provided for in subsection (a) shall not amend, construe, supersede, or preempt any State law, Federal law, interstate compact, or international treaty that pertains to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

(d) PER CAPITA PAYMENTS.—The proceeds from a water use contract may not be used for per capita payments to members of either Tribe.

SEC. 6. REPAYMENT OF PROJECT COSTS.

(a) MUNICIPAL AND INDUSTRIAL WATER.—(1) The Secretary shall defer, without interest, the repayment of the construction costs allocable to each Tribe's municipal and industrial water allocation from the Animas-La Plata and Dolores Projects until water is first used either by the Tribe or pursuant to a water use contract with the Tribe. Until such water is first used either by a Tribe or pursuant to a water use contract with the Tribe, the Secretary shall bear the annual operation, maintenance, and replacement costs allocable to the Tribe's municipal and industrial water allocation from the Animas-La Plata and Dolores Projects, which costs shall not be reimbursable by the Tribe.

(2) As an increment of such water is first used by a Tribe or is first used pursuant to the terms of a water use contract with the Tribe, repayment of that increment's pro rata share of such allocable construction costs shall commence by the Tribe and the Tribe shall commence bearing that increment's pro rata share of the allocable annual operation, maintenance, and replacement costs.

(b) AGRICULTURAL IRRIGATION WATER.—(1) The Secretary shall defer, without interest, the repayment of the construction costs within the capability of the land to repay, which are allocable to each Tribe's agricultural irrigation water allocation from the Animas-La Plata and Dolores Projects in accordance with the Act of July 1, 1932 (25

U.S.C. 386a; commonly referred to as the "Leavitt Act"), and section 4 of the Act of April 11, 1956 (70 Stat. 107; 43 U.S.C. 620c; commonly referred to as the "Colorado River Storage Project Act"). Such allocated construction costs which are beyond the capability of the land to repay shall be repaid as provided in subsection (g) of this section. Until such water is first used either by a Tribe or pursuant to a water use contract with the Tribe, the Secretary shall bear the annual operation, maintenance, and replacement costs allocable to the Tribe's agricultural irrigation allocation from the Animas-La Plata Project, which costs shall not be reimbursable by the Tribe.

(2) As an increment of such water is first used by a Tribe or is first used pursuant to the terms of a water use contract with the Tribe, the Tribe shall commence bearing that increment's pro rata share of the allocable annual operation, maintenance, and replacement costs. During any period in which water is used by a tribal lessee on land owned by non-Indians, the Tribe shall bear that increment's pro rata share of the allocated agricultural irrigation construction costs within the capability of the land to repay as established in subsection (b)(1).

(c) ANNUAL COSTS WITH RESPECT TO RIDGES BASIN PUMPING PLANT.—(1) The Secretary shall bear any increased annual operation, maintenance, and replacement costs to Animas-La Plata Project water users occasioned by a decision of either Tribe not to take delivery of its Animas-La Plata Project water allocations from Ridges Basin Pumping Plant through the Long Hollow Tunnel and the Dry Side Canal pursuant to Article III, section A, subsection 2.i and Article III, section B, subsection 1.i of the Agreement until such water is first used either by a Tribe or pursuant to a water use contract with the Tribe. Such costs shall not be reimbursable by the Tribe.

(2) As an increment of its water from the Animas-La Plata Project is first used by a Tribe or is first used pursuant to the terms of a water use contract with the Tribe, the Tribe shall commence bearing that increment's pro rata share of such increased annual operation, maintenance, and replacement costs, if any.

(d) TRIBAL DEFERRAL.—The Secretary may further defer all or a part of the tribal construction cost obligations and bear all or a part of the tribal operation, maintenance, and replacement obligations described in this section in the event a Tribe demonstrates that it is unable to satisfy those obligations in whole or in part from the revenues which could be generated from a water use contract for the use of its water either from the Dolores or the Animas-La Plata Projects or from the Tribe's own use of such water.

(e) USE OF WATER.—For the purpose of this section, use of water shall be deemed to occur in any water year in which a Tribe actually uses water or during the term of any water use contract. A water use contract pursuant to which the only income to a Tribe is in the nature of a standby charge is deemed not to be a use of water for the purposes of this section.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated such funds as may be necessary for the Secretary to pay the annual operation, maintenance, and replacement costs as provided in this section.

(g) COSTS IN EXCESS OF ABILITY OF THE IRRIGATORS TO REPAY.—The portion of the costs of the Animas-La Plata Project in excess of the ability of the irrigators to repay which are to be repaid from the Upper Colorado River Basin Fund pursuant to the Colorado River Storage Project Act and the Colorado River Basin Project Act shall be repaid in 30 equal annual installments from the date that the water is first available for use.

SEC. 7. TRIBAL DEVELOPMENT FUNDS.

(a) ESTABLISHMENT.—There is hereby authorized to be appropriated the total amount of $49,500,000 for three annual installment payments to the Tribal Development Funds which the Secretary is authorized and directed to establish for each Tribe. Subject to appropriation, and within 60 days of availability of the appropriation to the Secretary, the Secretary shall allocate and make payment to the Tribal Development Funds as follows:

(1) To the Southern Ute Tribal Development Fund, in the first year, $7,500,000; in the two succeeding years, $5,000,000 and $5,000,000, respectively.

(2) To the Ute Mountain Ute Tribal Development Fund, in the first year, $12,000,000; in the two succeeding years, $10,000,000 and $10,000,000, respectively.

(b) ADJUSTMENT.—To the extent that any portion of such amount is contributed after the period described above or in amounts less than described above, the Tribes shall, subject to appropriation Acts, receive, in addition to the full contribution to the Tribal Development Funds, an adjustment representing the interest income as determined by the Secretary in his sole discretion that would have been earned on any unpaid amount had that amount been placed in the fund as set forth in section 7(a).

(c) TRIBAL DEVELOPMENT.—(1) The Secretary shall, in the absence of an approved tribal investment plan provided for in paragraph (2), invest the moneys in each Tribal Development Fund in accordance with the Act entitled "An Act to authorize the deposit and investment of Indian funds" approved June 24, 1938 (25 U.S.C. 162a). Separate accounts shall be maintained for each Tribe's development fund. The Secretary shall disburse, at the request of a Tribe, the principal and income in its development fund, or any part thereof, in accordance with an economic development plan approved under paragraph (3).

(2) Each Tribe may submit a tribal investment plan for all or part of its Tribal Development Fund as an alternative to the investment provided for in paragraph (1). The Secretary shall approve such investment plan within 60 days of its submission if the Secretary finds the plan to be reasonable and sound. If the Secretary does not approve such investment plan, the Secretary shall set forth in writing and with particularity the reasons for such disapproval. If such investment plan is approved by the Secretary, the Tribal Development Fund shall be disbursed to the Tribe to be invested by the Tribe in accordance with the approved investment plan. The Secretary may take such steps as he deems necessary to monitor compliance with the approved investment plan. The United States shall not be responsible for the review, approval, or audit of any individual investment under the plan. The United States shall not be directly or indirectly liable with respect to any such investment, including any act or omission of the Tribe in managing or investing such funds. The princi-

pal and income from tribal investments under an approved investment plan shall be subject to the provisions of this section and shall be expended in accordance with an economic development plan approved under paragraph (3).

(3) Each Tribe shall submit an economic development plan for all or any portion of its Tribal Development Fund to the Secretary. The Secretary shall approve such plan within 60 days of its submission if the Secretary finds that it is reasonably related to the economic development of the Tribe. If the Secretary does not approve such plan, the Secretary shall, at the time of decision, set forth in writing and with particularity the reasons for such disapproval. Each Tribe may alter the economic development plan, subject to the approval of the Secretary as set forth in this subsection. The Secretary shall not be directly or indirectly liable for any claim or cause of action arising from the use and expenditure by the Tribe of the principal of the funds and income accruing to the funds, or any portion thereof, following the approval by the Secretary of an economic development plan.

(d) PER CAPITA DISTRIBUTIONS.—Under no circumstances shall any part of the principal of the funds, or of the income accruing to such funds, be distributed to any member of either Tribe on a per capita basis.

(e) LIMITATION ON SETTING ASIDE FINAL CONSENT DECREE.—Neither the Tribes nor the United States shall have the right to set aside the final consent decree solely because subsection (c) is not satisfied or implemented.

SEC. 8. WAIVER OF CLAIMS.

(a) GENERAL AUTHORITY.—The Tribes are authorized to waive and release claims concerning or related to water rights as described in the Agreement.

(b) CONDITION ON PERFORMANCE BY SECRETARY.—Performance by the Secretary of his obligations under this Act and payment of the moneys authorized to be paid to the Tribes by this Act shall be required only when the Tribes execute a waiver and release as provided in the Agreement.

SEC. 9. ADMINISTRATION.

In exercising his authority to administer water rights on the Ute Mountain Ute and Southern Ute Indian Reservations, the Secretary, on behalf of the United States, shall comply with the administrative procedures in Article IV of the Agreement.

SEC. 10. INDIAN SELF-DETERMINATION ACT.

The design and construction functions of the Bureau of Reclamation with respect to the Dolores and Animas-La Plata Projects shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act (88 Stat. 2203; 25 U.S.C. 450 et seq.) to the same extent as if such functions were performed by the Bureau of Indian Affairs. Any preference provided the Tribes shall not detrimentally affect the construction schedules of the Dolores and Animas-La Plata Projects.

SEC. 11. RULE OF CONSTRUCTION.

(a) IN GENERAL.—This Act shall be construed in a manner consistent with the Agreement.

(b) INDIVIDUAL MEMBERS OF TRIBES.—Any entitlement to reserved water of any individual member of either Tribe shall be satisfied from the water secured to that member's Tribe.

SEC. 12. EFFECTIVE DATE.

Sections 4(b), 5, and 6 of this Act shall take effect on the date on which the final consent decree contemplated by the Agreement is entered by the District Court, Water Division No. 7, State of Colorado. Any moneys appropriated under section 7 of this Act shall be placed into the Ute Mountain Ute and Southern Ute Tribal Development Funds in the Treasury of the United States together with other parties' contributions to the Tribal Development Funds, but shall not be available for disbursement pursuant to section 7 until such time as the final consent decree is entered. If the final consent decree is not entered by December 31, 1991, the moneys so deposited shall be returned, together with a ratable share of accrued interest, to the respective contributors and the Ute Mountain Ute and Southern Ute Tribal Development Funds shall be terminated and the Agreement may be voided by any party to the Agreement. Upon such termination, the amount contributed thereto by the United States shall be deposited in the general fund of the Treasury.

○

Senator WIRTH. Our first witness this morning is Congressman Ben Campbell, but before going to Congressman Campbell, let me ask Senator Bingaman if he has an opening statement that he might like to make.

[Prepared statement of Senator Wirth appears in the appendix.]

STATEMENT OF HON. JEFF BINGAMAN, U.S. SENATOR FROM NEW MEXICO

Senator BINGAMAN. Thank you very much, Mr. Chairman.

I want to also indicate that I am proud to be a co-sponsor of the legislation, and I want to thank you for chairing the committee. I gather this is a joint hearing of the two committees considering this bill.

My main interest in the legislation is based on my support for the Animas-La Plata project which is an integral part of the hearing subject being considered today. Authorization for the Animas-La Plata project was included in the Colorado River Basin Project Act of 1968 which also authorized the Central Arizona project as well as other upper Colorado River Basin development projects.

The project would be a multiple purpose water resource development in the Upper Colorado River Basin in southwestern Colorado and northwestern New Mexico. Municipal and industrial water would be furnished to Durango, to rural La Plata areas in Colorado, and to Farmington and Aztec, Bloomfield, and several smaller communities in New Mexico as well as to the Navajo Indian Reservation.

Unfortunately, as you know, there have been many delays that have prevented this project from going forward. A provision in the fiscal year 1985 Supplemental Appropriations Act made expenditure of the appropriated funds for the construction of the project conditional upon the Secretary of Interior and non-Federal entities entering into agreements providing for up-front cost sharing.

Subsequently, the Department of the Interior and the Justice Department insisted that the cost sharing agreement include a negotiated settlement of the Indian water rights for the Ute Mountain and the Southern Ute Mountain Tribes in southwest Colorado.

Today, in this hearing, you will be considering that settlement as embodied in S. 1415. The cost sharing agreement was executed on June 30, 1986. It involved the efforts of many New Mexican citizens, including our State engineer who is here to testify today, Mr. Steve Reynolds.

Since administration support for the Animas-La Plata project is conditioned on approval of the agreement, I look forward to reviewing the administration's testimony, and I hope that we can move forward expeditiously to get on with this long delayed project.

Thank you, Mr. Chairman.

Senator WIRTH. Thank you very much, Senator Bingaman.

I also have a statement from Senator Armstrong that we will include in the record at this point, without objection.

[Prepared statement of Senator Armstrong appears in the appendix.]

Senator WIRTH. Congressman Campbell, thank you very much for being here. We appreciate your coming over this morning and your continuing and very clear support and advocacy and organization for this project.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. REPRESENTATIVE FROM COLORADO

Mr. CAMPBELL. Thank you, Mr. Chairman.

I appreciate appearing before these two committees, and I would like to speak in my capacity as a prime sponsor of the House version of S. 1415.

There are many witnesses. I am sure it will be a long and informative day, and I will leave the technical language to the people who will be supporting and opposing the bill and keep my comments to a more general nature.

Certainly, it is appreciated, Senator Bingaman and yourself, Senator Wirth, the effort and the leadership you have shown in trying to move this legislation forward.

S. 1415 and its House counterpart, H.R. 2642, represent the culmination of years of effort and historic cooperation between the Indian and non-Indian water interests of Colorado, New Mexico, and the Federal Government. Extraordinary efforts were exerted by those concerned to amicably resolve in the spirit of cooperation and respect longstanding Native American water rights which, over the years, had been neglected or ignored.

Those remarkable efforts resulted in a settlement agreement signed in December 1986 by the Federal Departments of the Interior and Justice, the State of Colorado, and various local governments and water districts, as well as the Southern Ute and Ute Mountain Indian Tribes. As I understand it, a total of 13 different entities were involved in that agreement.

This legislation represents, codifies, and implements that delicately balanced agreement and the mandated commitment to these Indian tribes. For everyone's sake, we should not renege on that commitment as has so often happened in American history.

I ask that you remember the significance of and the effort put into this agreement in considering this legislation. Too much has been done by both Indians and non-Indians to come together in cooperation and respect to try to avoid costly and lengthy litigation. This legislation must be passed to ensure the continuation of that cooperation and respect.

Water is to native Americans just as it is to non-Indians in the West, precious. It is a key component to those western tribes seeking to escape the poverty and dependency brought about by scarce resources that nature and, sadly, our government has historically inflicted on the Indian.

We well know the benefits of the water that have been made available to or harnessed by the South, the Northwest, California, the Northeast, and the central United States. The Southwest is entitled to those benefits as well.

Indian self-development in the Southwest requires the scarce and precious resource of water to which the Indians are entitled.

I know firsthand of the needs of these two tribes for water. I have represented that area of Colorado and, in fact, live on the Southern Ute Indian Reservation. I represented them for 4 years in the State Legislature and now represent both tribes in Congress. My home is near the little town of Ignacio. I am sure, Senator Wirth, you are aware of that.

In that whole area, as you know, water is extremely important and probably the most talked about single issue whenever you deal with any issues at all. I can comfortably speak, I think, about the importance of it to Indians and ranchers, communities, and to people who are concerned about the environment, too.

S. 1415 and the settlement behind it represent a compromise. Paper water rights, however nice they look to attorneys and however much argued, do not help the Indian tribes. Wet water and the ability to use it are necessary.

This legislation seeks to eventually provide those needs to the tribes. Continued litigation by the tribes impacting upon the whole area is neither conducive to friendly relations nor to the Colorado and the New Mexico water interests. This legislation would avoid such friction.

There are people who feel threatened by this legislation, fearing the consequences of a just or amicable settlement of longstanding and substantial Indian water rights claims. Settlement of this legislation certainly does not deprive non-Indian water users from enjoying those water rights accorded to them by law. Non-Indian water users in Colorado, those who have the most to lose should this legislation fail and who are most impacted by Indian water claims, are willing to settle their differences. There is no reason why others cannot also do so.

I am pleased that since the House held its hearing on this legislation in September, parties to the settlement agreement have made great progress with the Department of the Interior in satisfying concerns the Department has had with respect to the legislation implementing the agreement signed by that department. That is good news.

Changes in the legislation clarify the original intent of the bill as introduced. Efforts are being made to work with lower basin States to relieve their fears and concerns about this legislation. That is also good news.

Along with all of the bill's supporters, I am willing to work to satisfy all reasonable concerns of those States in getting this legislation passed. We are willing to work with concerned interests, but we will not abandon the commitment to fairness and justice that we and the Congress owe to the Indian and non-Indian people of Colorado and New Mexico.

I stated that this legislation would satisfy this Government's commitments and obligations to the Ute Mountain Tribe and the Southern Utes, commitments and obligations that I don't think anyone can deny exist. I want to point out that this legislation, also at the same time, would satisfy in part this Government's longstanding commitment and obligation to all the peoples of southwestern Colorado and northwestern New Mexico.

Part of the delicate agreement between the Indians and non-Indians involves the satisfaction of Indian water rights claims from the long awaited Animas-La Plata water project which was authorized by law nearly 20 years ago. The commitment made by Congress at that time was to ensure that all the western States' water interests and needs be dealt with fairly. That commitment remains unfulfilled to date.

This cannot and should not be forgotten. Colorado and New Mexico say it should not be forgotten, and equity requires fulfillment of the Government's commitment.

I ask that you and your colleagues on this panel remember that commitment made by Congress and hope that you will have speedy passage of this legislation.

Thank you.

[Prepared statement of Mr. Campbell appears in the appendix.]

Senator **Wirth**. Thank you very much, Congressman Campbell. You have done a wonderful job in the House of moving this legislation.

What I would like to do, if I might, is ask Senator Domenici if he would like to come up to the witness table as representing yet another piece of the important coalition being put together here on behalf of Animas-La Plata.

Senator Domenici, thank you very much for coming over this morning. We really appreciate your help and support and would recognize you for whatever statement you think would be appropriate.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator **Domenici**. Thank you very much, Mr. Chairman.

Let me first say I know you have a very busy day, and I think it is fair to assume that there are all kinds of hearings going on around this place. Therefore, I want to be as expeditious as possible, both for you and for other Senators. So, I would ask that my statement be made a part of the record.

Senator **Wirth**. Without objection, so ordered.

Senator **Domenici**. I just wanted to join those who are urging that this legislation be handled as expeditiously as possible. New Mexico and your State of Colorado, as well as the two Indian groups in your State, have been waiting for a much longer time than is justified to see this project become a reality.

The Animas-La Plata project, as you know, Mr. Chairman, while it has very significant implications in your State of Colorado, also will supply an average of 54,000 acre-feet of water to New Mexico per year. The remaining 144,000 acre-feet will go to the State of Colorado. Through this project, we will be permitted to put to use the water of the Upper Colorado Basin to which we are entitled.

Actually, this legislation is historic, because nobody really believed that the various local governmental entities would ever be able to meet the cost sharing requirements of the law we passed a couple of years ago.

Some of us thought it unfair to apply those cost sharing requirements to the Animas-La Plata when most of its sister facilities authorized at about the same time escaped most of the cost sharing. Nonetheless, we went along with it, and, I think to the surprise of many, between the State of Colorado, the State of New Mexico, and various districts within them, we have come up with the matching funds for the project.

However, the project can't proceed unless and until we resolve the issue of the water rights claims of the Indian people. For those who think that the Federal Government is going to have to pay too much money here to resolve the water disputes, I hope they understand that the Indian people in Colorado had a very valid claim and probably would have succeeded in recovering large amounts of money from the Federal Government. Clearly, the water rights situation in that part of America could have been in a very serious state but for the resolution of the issues in this legislation.

So, I am here to urge that we expedite it. I am not so naive as to deny that there are some issues that will be very thorny. In order for the Indian people to have the full benefit of this belated recognition of their rights, obviously, this legislation would create some very unusual rights for off-reservation, interstate marketing of water.

I am sure we will hear plenty of pros and cons with reference to this issue. I hope there will be a discussion of various ways to ameliorate these concerns.

However, I urge, Mr. Chairman, that you expedite as much as possible the resolution of the remaining issues, that we try to work with the administration. They generally have been supportive, although I understand with reference to this specific piece of legislation they may have some reservations and some concerns.

The cause is a just one. It is very late in being resolved, and I stand ready to be of any assistance that I can in an effort to put together a package that can get through the United States Senate and resolve the remaining issues so we can get on with this major project.

I do want to thank the water engineer of the State of New Mexico, Mr. Steve Reynolds, one of America's foremost experts, for being here today, and I am sure he will shed some light on New Mexico's position with reference to this legislation and the Animas-La Plata project.

I look forward to working with you and the other members of these committees on this project which is so important to my State as well as to yours.

Thank you very much, Mr. Chairman.

[Prepared statement of Senator Domenici appears in the appendix.]

Senator WIRTH. Thank you very much, Senator Domenici.

Let me recognize also that we have been joined by Senator Evans.

Senator Evans, do you have any statement you would like to make or any questions for the witnesses?

Senator EVANS. Mr. Chairman, even though this particular bill does not affect our part of the country, I have a very strong interest in the ability of various water users to work out their problems.

We are faced and have been faced for some years with the same desire or opportunity to work out these problems between Indian tribes, water users, conservationists, and others in the development of the Yakima River Basin. We are in the middle of that process right now, and I am anxious to see how this works out and how broadly a coalition can be built. It may be beneficial for us in our efforts up there.

Senator WIRTH. Thank you very much, Senator Evans.

Thank you, Congressman Campbell. We greatly appreciate your help.

While it is true that much of the testimony today will focus on the pros and cons of the Animas-La Plata project, the fine points of western water law, and the precedents which would be established by passage of S. 1415, I would hope that all of us will remember that the real issue involved is the national obligation that we share to assist the Ute Mountain and Southern Ute Indian Tribes in achieving viable economic and social goals for their members.

We might have the first panel come to the witness table. The first panel includes Mr. Duane Woodard, a man of enormously good judgment who is the Attorney General of the State of Colorado. He is accompanied by Mr. William McDonald, director of the Colorado Water Conservation Board; and Mr. Ival Goslin, consultant for the Colorado Water and Power Authority in Grand Junction.

In addition at the witness table we have Mr. Chuck Lyle, an engineer with the Irrigation Division of the State of Colorado in Durango and Mr. Steve Reynolds, the State Engineer for the State of New Mexico in Santa Fe.

As you all are coming up to the witness table, let me make a request of all witnesses and a point for the record. We will leave the record open for any additional comments that any of the witnesses might like to make until December 18.

We have an extremely full agenda today, as all of you have seen from the witness list. I think we have about 30 witnesses for the morning, and if we were to divvy that up with five minutes for each witness, that would get us just to noon, at which time this committee has got to turn into a pumpkin.

So, what I am going to do is to ask each one of the witnesses if they would please limit themselves to 5 minutes, and our gratitude would again be overwhelming if you were to come in under that 5 minute period of time, and we will put your statements in full in the record.

At the end of each one of the panels, I am going to ask if any other members of the panel want to comment on what the others have said, because that kind of cross fertilization of ideas and comments is often most helpful. We will then move to questions, and the record will be left open for questions and answers as well as statements, and we will see if we can move through the morning very quickly.

That is going to depend upon the cooperation of everybody here, and I have asked the staff if they would get us a timer which will, with the miracles of modern technology, remind us of the 5-minute periods of time.

Finally, I would ask for your understanding as votes occur this morning. I will attempt to get back and forth to the floor without stopping the hearing and use other members of the panel to chair, and we will see if we can move back and forth so we can continue the hearing and make the record in the most complete way possible.

Let us start with Mr. Woodard, then go to Mr. Lyle, then go to Mr. Reynolds. I would ask each of you again to remember the 5 minute rule. I know that it is often difficult when you get within the walls of the Senate to have any kind of discipline on time, but we will ask you if you might do that to the best of your ability.

Mr. Woodard, thank you very much for coming and please proceed.

STATEMENT OF DUANE WOODARD, ATTORNEY GENERAL, STATE OF COLORADO, ACCOMPANIED BY J. WILLIAM McDONALD, DIRECTOR, COLORADO WATER CONSERVATION BOARD, AND IVAL GOSLIN, CONSULTANT, COLORADO WATER AND POWER AUTHORITY

Mr. **Woodard**. Mr. Chairman and members of the committee, it is a pleasure to appear here before you this morning and express the support of the State of Colorado, especially the support of the Attorney General and Governor Roy Romer's unqualified support for S. 1415.

Appearing with me today are Mr. Bill McDonald who is the director of the Colorado Water Conservation Board and Mr. Ival Goslin, a consultant to the Colorado Water Resources and Power Development Authority. These two gentlemen have been the principal participants with regard to the negotiations that have brought this proposed legislation to the point it is today.

I would also like to acknowledge the presence of the tribal chairmen, Mr. Leonard Burch, of the Southern Ute Indian Tribe and Mr. Ernest House of the Ute Mountain Indian Tribe who will appear subsequently.

Governor Romer's and my written statements have already been submitted, and I would appreciate their inclusion in the record.

Senator **Evans** [acting chairman]. Without objection, they will be included in the record in full.

Mr. **Woodard**. Thank you, Mr. Evans.

We are united in presenting to you today a solution, not a problem. We have had a problem for a number of years with regard to the litigation that has ensued across the San Juan River Basin of southwestern Colorado and the scarcity of the water resources needing to be apportioned between Indians and non-Indians in that portion of my State. Of course, there are representatives from the State of New Mexico who will be testifying subsequently as well with regard to that issue.

As you consider this settlement and the required implementing legislation, I would emphasize to you that each Indian reserved water rights situation is unique and that the factual economic and social circumstances surrounding a settlement will vary from tribe to tribe and State to State.

If Congress is to encourage negotiated settlements rather than years of expensive and divisive litigation, then it should endorse the principle that negotiated settlements will be treated on a case by case basis.

We have litigation in this instance which has been pending for the last 11 years. It is hoped that this agreement will, as a matter of fact—bring to a negotiated conclusion that litigation. A summary of the agreement is appended to Governor Romer's written statement, and I would request that particular agreement be included in the hearing record at the conclusion of these remarks.

Senator EVANS. Without objection, so ordered.

Mr. WOODARD. The agreement provides for a comprehensive settlement of the tribes' claims, and it has six major components.

The tribes will receive specified amounts of water from the Animas-La Plata and Dolores projects and additional rights to certain quantities of water from various streams which pass through their reservations.

Two, the manner in which these water rights will be used and administered is prescribed.

Three, in exchange for these water rights, the tribes will waive all of their reserved rights claims and any breach of trust claims which they may have against the United States.

Four, $60.5 million will be placed in development funds for the tribes.

Five, non-Federal parties will contribute substantial amounts of money to the financing of the settlement agreement.

Six, repayment of certain of the costs of the Animas-La Plata and Dolores projects which are allocable to the tribes will be deferred, and the tribes' share of operation and maintenance costs will be borne by the United States until the tribes put their water to use.

Last, I would like to focus briefly on the financial aspects of the settlement. I believe you will find the non-Federal parties' commitments in this regard to be exemplary.

Non-Federal financial contribution to this settlement takes two forms, up front financing from several parties for the Animas-La Plata project which will provide a sizable portion of the tribes' water and, second, payments by the State of Colorado to the tribal development fund.

With respect to the $60.5 million tribal development funds, the agreement calls for $11 million to be provided by the State, and $6 million of this has already been provided by the start-up of construction by the State of Colorado of a pipeline to deliver the Ute Mountain Ute Tribe's domestic water supply from the Dolores project to its reservation. The remaining $5 million will be paid in cash.

With respect to these financial obligations, I want to emphasize that Colorado has already met nearly all of its obligations. About 85 percent of the State's $48 million contribution to this project has already been appropriated by the State Legislature. The design of the pipeline from the Dolores project to the Ute Mountain Ute Reservation has already been completed, and we expect to go to construction shortly.

Finally, the $5 million contribution to the tribal development fund has already been appropriated, and we simply wait for further action with regard to S. 1415.

Mr. Chairman, I am going to conclude my remarks at this time, and I would be here for any questions that you or members of the staff may have for me or Mr. McDonald or Mr. Goslin.

Thank you very much.

[Prepared statements of Mr. Woodard and Governor Romer appear in the appendix.]

Senator EVANS. Thank you.

We will go on to the next two witnesses before getting into general questions, but I do have one question at this point. Do I understand correctly that in your written statement, you indicate that at the time S. 1415 was introduced, you hadn't an opportunity to fully work out the wording but that now the suggested amendments which are included in your written statement are and have been agreed to by the tribes involved, the State of Colorado, and the Departments of Interior and Justice?

Mr. **Woodard**. We have worked it out with the Department of Justice and the Department of Interior. We have the support of the Administration and, of course, the tribal chairmen of the two respective tribes will be testifying later, and it is agreeable to them as well. We have concurrence across the board.

Senator **Evans**. That is fine.

Next, Mr. Chuck Lyle.

STATEMENT OF CHUCK LYLE, ENGINEER, IRRIGATION DIVISION, COLORADO

Mr. **Lyle**. Thank you, Mr. Chairman.

My name is Chuck Lyle. I am the Irrigation Division Engineer for Division 7 which encompasses the San Juan and Norris River Basins in Colorado. Within those basins are both the Ute Mountain Ute Reservation and the Southern Ute Reservation.

I had the privilege of coordinating the committee that quantified the streams' quantities for each tribe on each individual stream. This involved working with the water users on each stream and the tribes to reach a fair and equitable settlement on each individual stream, spelling out exact amounts and quantities that the tribes would receive.

I would like to go ahead and submit my written statement for the committee, and briefly say that the cooperative effort that has been exhibited from the water users' point of view and the tribes' point of view in southwestern Colorado has reached a solution to the problem, and we would appreciate the favorable consideration of the committees on this bill.

Thank you.

[Prepared statement of Mr. Lvle appears in the appendix.]

[Material to be supplied appears in the appendix.]

Senator **Evans**. Thank you, Mr. Lyle.

Mr. Reynolds.

STATEMENT OF STEVE REYNOLDS, STATE ENGINEER, SANTA FE, NM

Mr. **Reynolds**. Thank you, Mr. Chairman.

For the record, my name is S.E. Reynolds. I am New Mexico State Engineer.

My statement is presented on behalf of the State of New Mexico with the approval of Governor Garrey Carruthers.

As has been said, enactment of S. 1415 and construction of the Animas-La Plata project are needed to implement the negotiated settlement of the Colorado Ute Indian tribes' reserved water rights claims. That negotiated settlement is consistent with the Justice

Department's current vigorous effort to negotiate rather than litigate Indian water rights.

If the bill is not enacted, ill will and expensive and protracted litigation would be fostered. The outcome of litigation is always uncertain, but it ultimately could require facilities or payments more costly than the Federal share of the Animas-La Plata project to meet the United States trust obligations to the Colorado Ute Tribes.

I understand that section 5 of the bill as introduced which would authorize the use of tribal water rights off the tribes' reservations may be troublesome to some of the Colorado River Basin States.

In the course of the negotiation of the June 1986 binding agreement for Animas-La Plata project cost sharing and financing, the New Mexico Interstate Stream Commission, through me, agreed to not oppose Congressional action exempting the Southern Ute and Ute Mountain Ute Indian Tribes from the restrictions of the Nonintercourse Act as those restrictions relate to the sale or lease of water for use off their respective reservations, provided that an agreement for financing and cost sharing of the project is executed pursuant to Pubic Law 99-88.

I believe our concession on that point is not prejudicial to New Mexico's interest, and that is still our position.

I am not sure I fully understand the reason for the proposed changes in section 4(b) of the bill; but as I construe those changes, the effect is the same as the language of the bill as introduced; and those changes are acceptable to New Mexico.

Mr. Chairman, on behalf of New Mexico, I urge this distinguished committee's favorable consideration of S. 1415, and I thank you for the opportunity to present this statement.

[Prepared statement of Mr. Reynolds appears in the appendix.]

Senator **Evans**. Thank you very much.

Mr. Woodard, in the proposed changes, I would judge that the important one really is the question of the rights to sell, lease, or otherwise dispose of water off reservation. What is your interpretation of the changes and the reason for the changes that you have proposed and have been agreed to by the parties?

Mr. **Woodard**. Mr. Chairman, if I may defer that question to Mr. McDonald who is the principal negotiator for the State of Colorado on that particular recent change.

Senator **Evans**. Certainly. Mr. McDonald, would you like to introduce yourself for the record?

Mr. **McDonald**. My name is Bill McDonald. I am director of the Colorado Water Conservation Board.

Among the changes which have been agreed to by the Federal Government, the tribes, and the State of Colorado are revisions to sections 5(a) and 5(c) of the bill as introduced. Effectively, 5(c) has been merged into 5(a). Beyond that, the result of the new proposed 5(a) is to accomplish the same thing as the bill as introduced.

We were seeking some clarification so that it was stated more precisely and in a manner that the Federal Government found acceptable, but the net result, I think, is the same as the bill as introduced.

Senator **Evans**. Do I understand correctly the intent of all of this is not to prejudice or to interfere with other laws or precedents that have been established and to sort of keep a neutral direction in terms of this particular question?

Mr. McDONALD. Yes, sir; that is the way we have described it. In fact, at some length, the Attorney General's written statement points out that a way of looking at this issue of off-reservation use of water is that the tribes potentially have to overcome three barriers. One is the Non-Intercourse Act which, clearly, this bill as introduced or as we propose it to be amended would remove.

Second, there is the question of the inherent characteristics of a Winters Doctrine Indian reserved water right. This bill does not prejudice those characteristics pro or con.

The third potential barrier is the applicability of State and Federal laws. Again, this bill as introduced or as we propose to amend it is neutral, if you will, in that regard.

Those matters remain to be addressed at a later date in a different forum.

Senator EVANS. I don't want to re-open all the negotiations with all the people here. In particular, I don't want to re-open the whole question of western water rights with all their complexities. I attempted to do that when I was Governor one time by suggesting that water was a valuable resource and we ought to consider water rights which had a termination date and had a price connected with it, and I was almost impeached in the process. I learned something, I think, in that effort.

But if under this proposal Indian water is disposed of on an interstate basis, then under the Colorado River Compact, to which State is the water allocated? What happens at that point?

As I understand it, currently all water, every drop of water is allocated to various States and various users. If Indians had a certain right and then they were to dispose of it interstate to a different State, how does that affect the allocation of water to various States?

Mr. McDONALD. That is an issue which we have not attempted to resolve in the course of these negotiations. The tribes can speak to the point. It has been the view of the tribes that there are provisions in the Colorado River Compact and in the Upper Colorado River Basin Compact which will provide them an avenue by which they will not be subject to the compacts. It is the view of the State of Colorado that they will be subject to the compacts.

However, we did not seek to resolve that issue in these negotiations.

Senator EVANS. So, that question is one that has just simply been laid aside as far as a recognized controversy that someone will face at some future date.

Mr. McDONALD. It has consciously been laid aside and the legislation endeavors to not address it, to be neutral, and to not prejudice that debate one way or the other.

Senator EVANS. I guess it gets to a more fundamental question which is far beyond this legislation and one we are trying to grapple with in terms of the Yakima River Basin, and that is whether any user who has a water right ought to be given the opportunity, if they can find better and more efficient use of water for their particular purposes and end up with a surplus, to sell it back or lease it back for other purposes without losing the long-term water right that they possess.

That could open up a good deal of potential conservation and better usage of water. That goes far beyond this legislation, of course.

I would hope that everyone who is interested in water and water use, particularly in water-short areas, would consider the potential of such legislation that might offer a real incentive without loss to a water user for better and more effective use of water.

We thank all of you for coming. I am particularly pleased—and I know I speak on behalf of all members of the committees involved in this—that every time we see a group which has worked out the problems and comes before us with legislation generally agreed to, that is pleasing indeed. We congratulate all of you for the efforts that you have put forth.

Let me now call our second panel. That includes the Honorable Ernest House, Chairman of the Ute Mountain Ute Indian Tribe of Towaoc, Colorado, accompanied by Dan Israel, attorney; and the Honorable Leonard Burch, Chairman of the Southern Ute Indian Tribe of Ignacio, Colorado, accompanied by Scott McElroy, attorney.

Thank you, gentlemen, for coming. We will begin with Chairman House and then proceed with Chairman Burch.

Chairman House, it is a delight to have you here.

STATEMENT OF HON. ERNEST HOUSE, CHAIRMAN, UTE MOUNTAIN UTE INDIAN TRIBE, TOWAOC, CO, ACCOMPANIED BY DAN ISRAEL, ATTORNEY

Mr. HOUSE. Thank you, Mr. Chairman.

I am honored to be here on your panel this morning. My name is Ernest House, Sr. I am the Chairman for the Ute Mountain Ute Indian Tribe. The Ute Mountain Ute Indian Tribe occupied a reservation in southwestern Colorado, northwestern New Mexico, and southeastern Utah.

The reservation was established as the result of a treaty of 1868. My reservation contains over 500,000 acres of land.

In order to develop the reservation for agriculture and other purposes, the tribe requires a secure quantification of its water rights. The Colorado-Ute Water Rights Agreement of 1986, as implemented in S. 1415, is designed to end a 100 year struggle to quantify and secure for the Ute Mountain Ute Tribe its water rights in order to make its reservation a viable homeland.

The tribe's water supply from direct water river flow and from two Federal reclamation projects, the Dolores project and the Animas-La Plata project. In addition, S. 1415 is designed to create a development fund for the development of both the Ute Mountain Utes and the Southern Ute Tribes.

The moneys in the development fund have been contributed by the State of Colorado and by the United States in recognition both of its past wrongs and the tribes' current needs for monies to develop the water resources for irrigation and other purposes.

At the hearing in the House on H.R. 2642 held before the House Interior Committee on September 16, 1986, the Administration had not agreed to the language and proposed to implement legislation which had been opposed by the two tribes and the State of Colorado. However, as a result of the meetings since September 16, 1987, the tribes, the State of Colorado, and the local water users, and the United States have reached agreement which is implemented by amendment to S. 1415.

While the two Ute Indian Tribes are pleased that we have reached agreement with the Administration as to the language of the legislation to implement the Colorado-Ute Water Rights Agreement of 1986, it is our judgment that we require additional support in Congress in order to successfully enact this legislation.

Finally, I want to thank the Senate for holding these hearings and for helping the tribes, the State of Colorado, and local water users of Colorado to find a responsible solution for what has been a longstanding and highly emotional problem. As you know, even to this day, the Ute Mountain Ute Indian Reservation does not have adequate water for domestic purposes let alone for agricultural purposes.

This agreement in S. 1415 will guarantee that intolerable situation will change in the immediate future.

In this year that we are celebrating the Constitution of the United States, in the Constitution it reads that Congress shall make treaties with Indian tribes. I think it is a fairer Constitution that I see now that we have reached that agreement with the local water users, the State of Colorado, and we are looking forward to the agreement of the Federal Government and Congress so we can carry this out.

Thank you for this time that you have allowed me.

[Prepared statement of Mr. House appears in the appendix.]

Senator WIRTH. Thank you very much, Mr. House.

Mr. Burch.

STATEMENT OF HON. LEONARD BURCH, CHAIRMAN, SOUTHERN UTE INDIAN TRIBE, IGNACIO, CO, ACCOMPANIED BY SCOTT McELROY, ATTORNEY

Mr. BURCH. Thank you, Mr. Chairman.

My name is Leonard Burch. I am the Chairman of the Southern Ute Tribe. I am accompanied today by our water attorney, Mr. Scott McElroy. I am testifying today on behalf of the Southern Ute Tribal Council which strongly supports S. 1415.

I ask that my written statement be made part of the record.

Mr. Chairman, I have with me four members of the Southern Ute Tribal Council: Mr. Pennecoose, Mr. Box, Mr. Howe, and Mr. Jefferson. I would like them to stand and be recognized.

Senator WIRTH. Gentlemen, thank you all very much. We are delighted you are here.

Mr. BURCH. We are very proud of the agreement. It reflects a lot of hard work on the part of our Council and our tribal staff. The Council has spent many days and nights working on the ideas in this settlement.

We carefully considered the needs of the reservation and our tribal members in the area of water development. The choices were not easy, but the Council is confident that this agreement meets the tribal needs and will give the tribe its ability to develop the resources of the reservation.

We worked long and hard in support of the Animas-La Plata project, and the tribe is pleased that Congress authorized it in 1968. Now, we are pleased that, together with our neighbors, we can use that project to solve otherwise what would be a long and bitter law suit affecting all of southwestern Colorado.

The agreement provides the tribe with an additional dependable water supply of about 40,000 acre-feet each year and the ability to put these waters to use on the reservation. It also provides for the administration of tribal and non-tribal water rights in a cooperative manner in settlement of a substantial breach of trust claim by the tribe against the United States. Finally, the agreement solidifies the valuable friendship that exists between the Indians and non-Indians in the communities of southwestern Colorado and northern New Mexico.

This is something that is very important to us. The key part of the settlement in the construction of the Animas-La Plata project will provide additional water to Indians and non-Indians. Without this additional water supply, I do not think settlement would be possible.

I want to talk briefly about one of the controversial parts of the bill. As you know, negotiated agreement requires the enactment of Federal legislation before the settlement is final. Each of the legislative requirements is a vital part of the agreement. I want to give you our thoughts on one of these provisions.

Section 5 of S. 1415 will satisfy the Non-intercourse Act which will stop the tribe from transferring or leasing its water rights off the reservation. Although we hope to use our reservation resources, we recognize that problems may arise in meeting that goal.

Like water users everywhere, tribal interests may be better served by allowing others to use our water for a while in return for adequate payment. We don't think that the Non-intercourse Act should keep us from receiving the full value of our water rights. On the other hand, we know that some of the down stream users argue that the law of the river does not allow such transfer out of State and that the Winters Doctrine did not give us water rights that could be transferred.

Although our attorneys disagree with those who argue that the law of the river and the Winters Doctrine rights forbid the leasing of our water out of State, we have agreed not to ask Congress to modify or codify that as previously said. Instead, we are satisfied to have the courts answer these technical legal questions about the scope of the rights given the tribe in 1868 and whether Congress has changed those rights over the years.

In short, we do not ask that water users in the Lower Basin agree with our position on these matters, but some down stream water users are asking Congress to take away from the tribe the opportunity to even present this view in court. I think those people want to keep the tribe from using our share of the Colorado River so that they can keep getting it for free like they are now.

If this settlement fails, southwestern Colorado will be fighting in court for years over these water rights. In the meantime, Lower Basin water users will continue to get our water. We think that neutrality on this issue is the fair approach, and I hope the Congress will, too.

Mr. Chairman, I would emphasize our willingness to work with those who are concerned that the language in the bill and the agreement may give the tribe an advantage in future litigation on whether their reserved rights may be leased out of State, and that is not our intent.

Mr. Chairman, in closing, this settlement is very important to all of southwestern Colorado and the Southern Ute Indian Tribe and the Ute Mountain Ute Indian Tribe. It will provide for fair settlement of the tribes' Winters rights claims and give a much needed boost to our agriculture.

We hope that you will give favorable consideration to this bill.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Burch appears in the appendix.]

Senator WIRTH. Thank you very much, Chairman Burch.

Let me establish a couple of points for the record.

First of all, could you tell me for the record which rivers in Colorado would be affected by your water rights?

Mr. HOUSE. Mr. Chairman, with me today is Mr. Dan Israel, the tribal attorney.

On the Ute Mountain Ute Reservation, the river that we will be talking about would be the Mancos River which runs through the Ute Mountain Ute Reservation portion of southwestern Colorado. These people that are on that drainage in the town of Mancos and the Valley of Mancos will be affected by the legislation if it doesn't go through.

Senator WIRTH. For the Ute Mountain Utes, it is the Mancos. Mr. Burch.

Mr. MCELROY. My name is Scott McElroy. I am counsel for the Southern Ute Tribe.

It is the San Juan River, the Piedra, the Florida, the Animas, and the La Plata Rivers that are affected by the settlement and the tributaries of those streams.

Senator WIRTH. So, what would happen if there were no Animas-La Plata project or no other large project? What impact would that have on farmers and ranchers in the area?

Mr. MCELROY. Well, let me speak to the La Plata. That is probably the most dramatic instance in connection with the Southern Utes.

On the La Plata, the stream is already fully appropriated. Non-Indian water users make use of virtually all the water in the river.

The tribe has very substantial claims with an 1868 priority date pending in court. We could use up virtually all the water in the La Plata on the reservation which would leave those other towns and communities and farmers without a viable water supply.

Senator WIRTH. How many people and how many towns would that affect?

Mr. MCELROY. I am not exactly sure of the number of users.

Senator WIRTH. Would it be 1,000 or 10,000?

Mr. MCELROY. Oh, I think we are talking of 400 or 500 farms, ranches. We have New Mexico users who take advantage of the La Plata, Farmington, and those towns.

Senator **Wirth**. It is my understanding that if this legislation passes, the rights of the Indians would be satisfied by water out of the Dolores and Animas-La Plata. Is that correct?

Mr. **McElroy**. That is correct for the streams affected by those two projects. In addition to that, the Southern Ute Tribe has resolved its claims on those other streams.

We have an agreement on how we will quantify the water rights out of the San Juan, the Florida, and the Piedra, and those are tied back also as a practical matter to the project. The fact that the tribe gets its water out of the project, this big slug of water kind of has a ripple effect that made it possible to settle those other streams where the tribe gets water directly from the stream.

Mr. **Israel**. Mr. Chairman.

Senator **Wirth**. Mr. Israel.

Mr. **Israel**. My name is Dan Israel. I am a lawyer representing the Ute Mountain Ute Tribe.

Just to make the record straight, in addition to the Mancos River, the Ute Mountain Ute Tribe has claims on the Dolores, the Animas, the La Plata, and the San Juan. It is our judgment that if we and the Southern Ute Tribe were to go to court with the assistance of the United States and gain our claims, for example, on the Mancos and La Plata that all of the non-Indian farmers and communities on those rivers would be wiped out.

There simply is not water enough for those communities and for the tribes, and we are talking about not only farms but people in the town of Mancos which is a community of over 1,000 people. So, the impact is quite direct and quite measurable.

Senator **Wirth**. I just wanted to establish for the record what the rights were and who would be affected if there were no Animas-La Plata and what the impact would be on farmers, ranchers, and communities in the area.

Mr. **House**. Mr. Chairman, right now what we are going through in the southwestern part of Colorado is the economic drop down in our area. We are not generating any of the funds that we used to back 3 or 4 years ago with the Indian tribes as far as natural resources are concerned, and our area is focused mostly on that type of energy.

When you have the price of oil going down there, that affects the Indian tribes as well as the people in the Four Corners area, because all that is related to energy resources like oil and gas. If you don't have Animas-La Plata, if you take that out of there, then Lord knows what would happen. Maybe we would have the white man-Indian wars again. I don't know, and I don't want to go through that.

Senator **Wirth**. Are there further comments that any of you would like to make?

Mr. **Burch**. Yes, Mr. Chairman.

Senator **Wirth**. Chairman Burch.

Mr. **Burch**. I want to say for the record why we keep saying it is important both to the Indians and the non-Indians on the Southern Ute Reservation.

The make-up of our reservation is a checkerboard. We have Indian and non-Indian lands dispersed within the boundaries of the reservation. You will be hearing from some of the people who are against the project about making this an all-Indian project, but because of our land pattern, we want to work together so that whole area including the communities and the neighbors we have worked with can get the benefit of use of the waters that will be stored in the project.

That is why it is important to the area in southwestern Colorado.

Senator WIRTH. Well, gentlemen, thank you very much for joining us this morning. We greatly appreciate your being here, and, as I pointed out, the record will be open for any further comments you might like to make or questions from members of the committees.

Thank you very much for coming.

Our next panel includes witnesses from the Administration, if they might join us at the witness table at this point. They are the Honorable Wayne Marchant, Deputy Assistant Secretary for Water and Science; the Honorable Ross Swimmer, Assistant Secretary for Indian Affairs at the U.S. Department of the Interior; and the Honorable Myles Flint, Deputy Assistant Attorney General at the U.S. Department of Justice.

Gentlemen, thank you very much for being here. You are familiar with the ground rules which we would like to keep rolling here.

Mr. Marchant, let us begin with you.

STATEMENT OF HON. WAYNE MARCHANT, DEPUTY ASSISTANT SECRETARY FOR WATER AND SCIENCE, U.S. DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY HON. ROSS SWIMMER, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. MARCHANT. Thank you, Mr. Chairman.

My name is Wayne Marchant. I am the Deputy Assistant Secretary for Water and Science, and I am joined here by Ross Swimmer, who is our Assistant Secretary for Indian Affairs.

It is a pleasure for me to be here today. I willingly accept your invitation to be brief. I would ask that my statement be included for the record, because I think there are some important amendments appended to it, and I will get to that in 1 minute.

Senator WIRTH. Without objection, it will be included in the record.

Mr. MARCHANT. Thank you.

I would like to observe that we are here today as a result of a process that, in my judgment, is truly remarkable and that could serve as a model for negotiating resolution of complex water issues in the West. It was my privilege to participate in the later stages of the negotiations that led to the cost sharing agreement and to the settlement document that was signed last December, and I was impressed throughout that process by the statesmanship of all of the non-Federal parties who grappled with these inherently difficult issues and reached what I think is a successful and laudable resolution.

We support legislation to implement the December 10, 1986 final settlement agreement. However, as you have heard and as I know you are aware, Mr. Chairman, the legislation as it was introduced differed in several important respects, in our view, from the settlement agreement that was reached in December.

It was because of that that we have met since the hearing on the House side for the companion bill with the non-Federal parties, and I am pleased to report that we have reached agreement on some recommended amendments to the bill that, if enacted, would cause the bill to be acceptable to the Administration, and I am able to say that the Interior Department would support that legislation.

I think having said that, I would like to, in the interest of time, submit my statement for the record and make myself available for any questions you might have at the appropriate time.

Senator WIRTH. Fine, thank you.

Mr. Swimmer, do you have any additional comments you would like to make?

Mr. SWIMMER. No, thank you.

[Prepared statement of Mr. Marchant and Mr. Swimmer appears in the appendix.]

Senator WIRTH. Next, we will hear from you, Mr. Flint.

STATEMENT OF HON. MYLES FLINT, DEPUTY ASSISTANT ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE

Mr. FLINT. Thank you, Mr. Chairman.

It is a pleasure for me to appear today with respect to S. 1415. The Department of Justice, working with the representatives of the Department of Interior, worked very hard with the citizens of the State of Colorado, both Indian and non-Indian, and the State officials in developing a settlement agreement which was signed in December 1986. We support the legislation to implement that agreement with the amendments which are appended to Mr. Marchant's testimony.

I have a written statement which has been submitted, and I would like to have it made a part of the record.

I think that, as Mr. Marchant has stated, this is the culmination of a very long and hard negotiation which is an admirable way to resolve a very difficult problem confronting the people in the southwestern corner of Colorado and northwestern New Mexico, and the Department of Justice supports the bill with the amendments appended to Mr. Marchant's testimony.

[Prepared statement of Mr. Flint appears in the appendix.]

Senator WIRTH. So, for the record, we can say that with the amendments that you outlined, the Department of the Interior and the Department of Justice, the main departments involved in the Administration, support this legislation and support the agreement. Is that correct?

Mr. MARCHANT. That is correct, Mr. Chairman.

Senator WIRTH. We can say that with no caveats and we don't have to say maybe and maybe not and so on.

Mr. MARCHANT. I would say you are free to say it is unequivocal support.

Senator WIRTH. That is wonderfully refreshing.

Now that we got to that point, let me take the next step.

We have heard a great deal of praise of this agreement and what a remarkable agreement it is. It seems to me that the agreement is held together by a good deal of Federal funding. Isn't that correct? If it were not for a significant commitment of Federal funding, the deal wouldn't work. Isn't that right?

Mr. MARCHANT. That is true.

Senator WIRTH. Having supported the legislation and agreed with me that it is true that this needs money to work, now can you outline for me what the Administration's commitment is to the funding of this?

Mr. MARCHANT. We have committed to support the construction of the project, Mr. Chairman, and we——

Senator WIRTH. Let's hear some dollars. Let's see if we can get some specifics out of this. Can we do that?

Mr. MARCHANT. If my memory serves me correctly, the total Federal cost that is contemplated by this is $320 million for the construction and an additional $60 million for the tribal development funds.

Senator WIRTH. I understand that. That is descriptive once again. Now describe for us the Administration's commitment to supporting this project.

I am going to keep after you, Mr. Marchant, until I get an answer.

Mr. MARCHANT. We have requested in the current budget, I believe, something on the order of $2 million.

Senator WIRTH. That is 1/180th of the cost of the project. Is that right?

Mr. MARCHANT. That is correct, but, of course, you understand that——

Senator WIRTH. What is the assumption on the ground of the people in Colorado and New Mexico as to what should be done in the first year?

Mr. MARCHANT. My understanding is that there is fairly general agreement that that is a reasonable request for the first year for several reasons. First of all, it can only be spent at this point for pre-construction activities. That includes design and additional hydrological studies and geological studies that are required preparatory to construction, and it is not appropriate to request any greater funding at this point in the absence of implementing legislation which, as you have already heard, is a key to the actual construction process.

Senator WIRTH. Could you tell us what was in Interior's request to OMB as you are putting together the 1989 budget?

Mr. MARCHANT. Mr. Chairman, I will have to submit that for the record. I don't recall the dollar amount.

Senator WIRTH. Can you give us a ball park figure?

Mr. MARCHANT. I believe it was something on the order of $6 million. However, I have been reminded that OMB Circular A-11 prohibits Administration officials from disclosing elements of the President's budget prior to its submission to the Congress. I will be pleased to submit this information after formal submission of the President's budget, which is scheduled for February 1988.

Senator WIRTH. Does that assume that the authorizing legislation is completed?

Mr. MARCHANT. It assumes an escalation of the preparatory pre-construction activities.

Senator **Wirth**. If we were to pass this legislation before the next budget cycle got going, what would you be requesting?

Mr. **Marchant**. I suspect we would stand by our original request, because there is a certain incubation period during which the ability to spend greater amounts increases annually as the pre-construction activities progress.

Senator **Wirth**. Let's make the assumption that this legislation passed in January or February and then that we have a lot of incubation period between January or February and the time the next fiscal year begins in October 1988. How much incubation time is there for that so that we can get a good commitment of funding out of the Administration?

Mr. **Marchant**. Mr. Chairman, we are committed to completing this project, but we would do so——

Senator **Wirth**. You can't complete it with $2 million.

Mr. **Marchant**. We couldn't spend the whole $320 million in 1 year, either.

Senator **Wirth**. I understand that, but can't we do better if there is a commitment to the project and you all support the project? Shouldn't we be expecting more of a commitment out of this Administration?

Mr. **Marchant**. We are intent upon completing it in conformity with the Secretary's policy announced last year under which we are bending every effort to complete those projects presently under construction that are nearest to completion, and there is a very good reason for that. We simply cannot find enough money and the Congress historically has not appropriated enough money in any given year to prosecute all of the 60-some projects that we have under construction on a schedule that would satisfy the engineers or that would be at an optimal engineering construction schedule.

As a result, all of the projects have been under-funded every year for a long period of time. So, what we have decided to do at Interior is to pursue those projects nearest to completion at an efficient construction schedule to allow us to finish those projects which would, in the out years, provide substantial money within the OMB projected budget requests to apply the same policy to all the other projects on the docket.

Our expectation is that following that policy would allow us to finish all of the projects that are authorized on time as presently contemplated and we even think many of them would be completed in advance of the presently projected construction schedule.

Senator **Wirth**. So, for the record, you are saying, in pre-construction, $2 million this year is the most that can be carefully spent. Is that right?

Mr. **Marchant**. Well, it was a reasonable request in light of the fact that we are only allowed to do those pre-construction activities that are reversible in the event that we don't get implementing legislation.

Senator **Wirth**. And the most you could spend would be $2 million this year. Is that right?

Mr. **Marchant**. Well, our engineers are very adept. I am sure they could spend more, but we have made that request in recognition of the——

Senator **Wirth**. For the record, how much could optimally be spent in fiscal year 1989, assuming the enabling legislation is passed?

Mr. **Marchant**. I would have to provide that for the record, Mr. Chairman.

Senator **Wirth**. Approximately how much?

Mr. **Marchant**. I would believe that our original budget request contemplated the optimal spending level for the pre-construction phase.

Senator **Wirth**. And that would be how much?

Mr. **Marchant**. I am informed that the Bureau of Reclamation's estimate of the optimal spending level for Animas-La Plata in fiscal year 1989 is $5,781,000, assuming that the enabling legislation is passed.

Senator **Wirth**. And that is the amount, for the record, that optimally could be spent. Is that right?

Mr. **Marchant**. Certainly in conformity with the policy that I just described, yes.

Senator **Wirth**. And at that rate, when would the project be finished do you think? Would it be in 2020 or 2050?

Mr. **Marchant**. Again, I would have to provide that for the record, but our expectation is that the cost-sharing agreement calls for completion of the project within 12 years following the start of construction. I am informed that, subject, of course, to congressional appropriations, the Bureau of Reclamation estimates that construction will be completed within this 12-year period, and bases its estimates and schedules on that assumption.

Senator **Wirth**. One of the points I am making is that over the years, those of us who have been eager to move the project have had a great deal of difficulty getting a commitment out of the Administration. You are familiar with that, and we are familiar with that.

That is the thrust of my questioning. I am not going after you. I just want to make it clear for the record that the thrust has been that those of us who want to do that have had a feeling of well, maybe or maybe not, on the one hand and on the other from you all, and I am delighted to hear you this morning saying that you support the legislation with the amendments. The next step is to get that same kind of clear commitment on funding.

We will continue to work on that.

Mr. **Marchant**. I would like to respond if I may. I am not sure that I made clear our expectation that if we are allowed to pursue the Secretary's policy for completing these projects, and if there is not any exacerbation of the present budget difficulties that we all face in the Federal establishment, beginning in about 1991 and continuing beyond that, there will be substantial money available in our projected budget requests to apply to those projects that are not near completion at the present time that will allow us to expedite construction of all of those projects.

So, it is our expectation—it certainly is our hope—that we would be able to finish all of the 60-some projects in advance of their presently projected schedules simply through intelligent scheduling and expenditure of the money in a cost effective way.

Senator **Wirth**. Well, I hope that is true.

Let me ask you, Mr. Flint, a final question. Is there anything in the agreement that has a deadline in it for the completion of the project and the delivering of water to the Indians to meet their water rights?

Mr. **Flint**. I am going to have to refer to the attorneys who worked on the matter, if I may.

Senator **Wirth**. You can see how that would be important. If there is a time deadline for the allocation of water and we are not going to make that with the kind of funding that is available, how do those two fit together?

Mr. **Flint**. This is John Lang who is an attorney with the Department who was involved in the negotiations.

In the current agreement, there is no deadline that provides for when water would flow from the project.

Senator **Wirth**. So, it could be carried out for a long period of time, and the Indians could be in a position of not receiving any water, but, in fact, what we would be doing is operating on their good faith that they would then not go to court, get frustrated, or whatever it may be, saying hey, you are not going to deliver this water.

Mr. **Marchant**. Mr. Chairman, there is one point I would like to emphasize, and I think Justice has a comment about the protraction, possibly.

The budget projections that I discussed with you have been endorsed by the Office of Management and Budget, so it truly does represent a solidified Administration position. We have been discussing projected budget requests with the blessing of OMB, and that is the basis on which I project that there will be substantial money freed up as projects that are presently near completion are in fact completed which allows us to divert resources to the rest of the projects on our docket.

Senator **Wirth**. David Stockman gave us a good picture of OMB projections of funding.

Mr. **Flint**. Senator, there is no provision in the document that says when the water must flow. However, there are provisions in the agreement that provide that if there is not action completed or taken by specified times, then the parties have the right to reexamine the situation.

Senator **Wirth**. What are those specified times?

Mr. **Flint**. I am looking at a copy of the agreement, and let me give you the citation. It is Article III, and I am looking at page 31 of the document.

There are targets contained here in that we are talking about enabling delivery to the tribes on or before January 1, 2000 with respect to the Ridge's Basin Reservoir—excuse me for a moment.

Senator **Wirth**. Why don't you have your colleague join us, or answer the question for the record.

Mr. **Flint**. I will, if you don't mind, submit an answer for the record.

Senator **Wirth**. Ok.

[Material to be supplied appears in the appendix.]

Senator **Wirth**. For the record, we are on page 31 of the settlement agreement which reads, "If Ridge's Basin Reservoir and the facilities necessary for the delivery of the tribe's agriculture irrigation water are completed so as to enable the delivery of water to the tribes as described in this subsection on or before January 1, 2000, then (a) the settlement of the tribe's pending reserved and appropriated water rights claims on the Animas and La Plata Rivers contained in this agreement shall become final."

It goes on from there. We might, without objection, have included in the record that section of the agreement. The whole agreement will be in the record, but we might put in the record pages 31 through 36 of the agreement, because that is relevant to the discussion that we are having right here.

[Material to be supplied appears in the appendix.]

Senator **Wirth**. Mr. Flint.

Mr. **Flint**. There is a provision in section 12 of S. 1415 which provides that the final consent decree that would be submitted to the Colorado court to finalize the water allocation issues must be submitted to the—or if it is not submitted to the Colorado court by December 31, 1991, the parties would have a right to withdraw from this agreement. That consent decree cannot be finalized and put into form and submitted to the court until this legislation has passed.

In addition, the agreement provides that moneys would be appropriated over a 3-year period for purposes of constructing the project. It does not, however, specify when that 3-year period starts.

Senator **Wirth**. To close this out, Mr. Marchant, can you provide for the record your analysis of what is in the agreement and the time deadlines and a statement from the Department of the Interior that you expect that, in fact, you can meet those deadlines with the funding request that you are making? Does that make sense to you?

Mr. **Marchant**. Yes; I understand the question, and we can do that.

Senator **Wirth**. I just want to make sure that we are not setting ourselves up for a fall here by saying we have an agreement that goes to a certain set of dates when, in fact, the support coming from the Administration to complete the project falls short of that so, consequently, the agreement falls apart. Do you see what I mean?

Mr. **Marchant**. Yes; I understand. We would be pleased to do that.

Senator **Wirth**. Does that make sense?

Mr. **Marchant**. Yes.

[Material to be supplied follows:]

Information requested was supplied in letter of December 16 to Chairman Inouye (copy attached).

We have based our funding request upon the need to meet the target dates described in that letter, and we expect to meet them.

U.S. Department of the Interior,
Office of the Secretary,
Washington, DC, December 16, 1987.

Hon. Daniel K. Inouye,
Chairman, Select Committee on Indian Affairs, U.S. Senate, Washington, DC.

Dear Mr. Chairman: At the December 3, 1987, hearing chaired by Senator Wirth, I presented the views of the Department of the Interior on S. 1415, "The Colorado Ute Indian Water Rights Settlement Act of 1987." As I promised in my oral testimony, I am providing this additional information for the record.

During the course of the hearing, Senator Wirth asked whether there was a deadline in the December 10, 1986, Settlement Agreement by which the Animas-La Plata Project was to be constructed. The Agreement does not provide a date certain for completion of the Animas-La Plata Project. There are, however, dates set forth in the Agreement that trigger certain options which the Tribes may take to finally resolve their federal reserved water rights claims on the Animas and La Plata Rivers in the event certain facilities of the Project are not completed so as to enable delivery of water to the Tribes. It is the purpose of this letter to set forth these construction "deadlines" which appear in the December 10, 1986, Agreement and to briefly describe what happens if the "deadlines" are not met.

The Ridges Basin Reservoir is a major component of the Animas-La Plata Project. The December 10, 1986, Agreement essentially provides that if the Ridges Basin Reservoir and associated facilities required to provide for delivery of water to the Tribes are completed by January 1, 2000, the settlement of the reserved water rights claims of the Tribes on the Animas and La Plata Rivers will become final. If the Ridges Basin Reservoir and associated facilities are not completed by January 1, 2000, then the Tribes have an additional five-year period, or until January 1, 2005, in which to elect to either keep their project reserved water rights supplied from the Animas-La Plata Project, or to initiate litigation or renegotiation of their reserved water rights claims on the Animas and the La Plata Rivers. If the Tribes have made no election by January 1, 2005, they shall be deemed to have elected to retain their project reserved water rights, and the settlement of their pending reserved and appropriative water rights claims on the Animas and the La Plata Rivers will become final. If the Tribes elect to commence litigation or renegotiation of their pending reserved water rights claims on the Animas and the La Plata Rivers, they relinquish and forfeit the project reserved water rights from the Animas-La Plata Project. The Tribes, however, may revoke an election to litigate or renegotiate and accept the project reserved water rights in final settlement of their claims should the project facilities be completed at any time after their election.

These "deadlines" and the tribal options associated with these dates are more fully set forth in Article III of the Agreement. For the Ute Mountain Ute Tribe, please refer to Article III, Section A, subsectiion 2(f), beginning near the bottom of page 19 of the Agreement and ending on page 22. For the Southern Ute Tribe, please refere to Article III, Section B, subsection 1(f), beginning near the bottom of page 30 of the Agreement and ending on page 33.[1]

These "deadline" provisions affect other sections of the Agreement, as for example, the waiver and release provisions. Section 8 of S. 1415 calls for a waiver and release of claims by the Tribes as provided in the Agreement. Article VI, Section A, subsection 1(e) of the Agreement sets forth the provisions for the waiver and release of claims by the Tribes. This subsection 1(e), which appears on pages 64 to 66 of the Agreement, refers to the "deadlines" described above by making reference to pertinent subsections of Article III of the Agreement. In essence, the waiver of claims by the Tribes will not be effective until Phase I of the Animas-La Plata Project as defined in the June 30, 1986, Binding Agreement for Animas-La Plata Cost-Sharing is complete or the Tribes elect to retain the project reserved water rights as described in Article III, Section A, subsection 2(f)(ii) or Article III, Section B, subsection 1(f)(ii).

If you have additional questions, we will be happy to answer them.

A similar letter has been sent to the Honorable Bill Bradley, Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources.

Sincerely,

WAYNE N. MARCHANT,
Principal Deputy Assistant Secretary for Water and Science.

Senator **WIRTH**. We have been joined by the distinguished Chairman of the Water Subcommittee, Senator Bradley.

Senator **BRADLEY**. Senator Wirth, I just want to thank you for chairing this hearing. I am currently in the Budget and Finance Committees. I will not be able to stay, but I think that the record will be enormously important.

I would intend to submit some questions for the record to get written responses from the witnesses.

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[1] The Agreement also contains similar "deadline" provisions with regard to the completion of the Dolores Project facilities. See Article III, Section A, subsection 1(g)(i) and (ii) on pages 11 to 13 of the Agreement.

Senator **WIRTH**. We have left the record open until December 18 for questions.

Senator **BRADLEY**. So, those questions will be provided to the witnesses in writing, and I thank you very much for carrying this hearing.

Senator **WIRTH**. Thank you very much for agreeing to the expeditious establishment of the dates for this, and we wish you well on the Budget and Finance Committees. We were talking about budget issues right here, the budget of Animas-La Plata and whether we can make that and meet the Indian water rights claims.

Mr. Marchant assures us that OMB is setting this up so that there will be plenty of funding for the completion of every Federal water project, and I assume that will be done just like you will be balancing the budget this afternoon. [Laughter.]

Gentlemen, thank you very much for being with us. We greatly appreciate it, and I look forward to hearing from you. Thank you for joining us.

Our fourth panel of the morning includes Mr. Fred Kroeger, the President of the Southwestern Water Conservation District and a board member of the Animas-La Plata Water Conservancy District in Durango, CO; Mr. Larry Deremo, a board member of the Dolores Water Conservancy District in Cortez, Colorado; and Mr. Tom Colbert, President of the Mancos Water Conservancy District and Commissioner of Montezuma County from Mancos, Colorado.

Gentlemen, we thank you very much for joining us. You are all familiar with the rules of the committee and the procedure which we would like to follow. I would ask you to summarize your testimony, and you might also comment on anything you have heard this morning that raises a concern for you.

So, why don't we start with you, Mr. Kroeger? Thank you for coming.

STATEMENT OF FRED KROEGER, PRESIDENT, SOUTHWESTERN WATER CONSERVATION DISTRICT AND BOARD MEMBER, ANIMAS-LA PLATA WATER CONSERVANCY DISTRICT, DURANGO, CO

Mr. **KROEGER**. Thank you very much, and I will try to give you back a minute or two.

Mr. Chairman, my name is Fred Kroeger. I am President of the Southwestern Water Conservation District and a member of the Animas-La Plata Conservancy District.

I have spent all of my life in that area, that is, all of my life up to this point, and I witnessed the drought of 1934. That is the greatest run on record during my lifetime. There was also the drought of 1956 and the one in 1977, and I also witnessed the floods of 1927 and 1970 and 1973, and I am aware that it is necessary to store water in Colorado if we are going to have adequate amounts to level out the requirements of both domestic and irrigation water for agriculture.

The Animas-La Plata, I think, does more things for more people and solves more problems for more involved groups than any project that I have been involved with, and I have been involved with several because I spent 21 years on the State of Colorado Water Conservation Board.

It provides water for the two States, New Mexico and Colorado, and for four cities: Durango, Aztec, Farmington, and Bloomfield, New Mexico and for approximately 20 rural domestic water systems. It provides water for 42,000 acres of farm land with a reliable supply, and the gross income that is expected from that which would be returned to our area is in excess of $16 million per year.

It provides recreation with a 2260-acre surface lake within a 3-mile distance of the town of Durango, and the environmental impacts are very, very negative. We do have some detrimental impacts to the river rafters, but recent studies would indicate that with the first phase, this is very minimal and only on extremely dry years would this be a requirement.

It does not destroy fishing, and it does not dry up the river. The fact is it returns water to the river during dry years.

The off-stream reservoir is a plus. We don't dam the river, and it provides water on lands that have proven only marginal as it relates to deer and elk habitat. It also environmentally greens what is known as the Red Mesa area, an area that annually starts out with encouraging and hopeful crops only to dry and wither when the rains don't come.

However, the most important thing for the Animas-La Plata project is the settlement of the Indian water rights claims.

The Southwest Water Conservation District covers all of that land and rivers that are within that system, seven major streams and rivers and their tributaries.

The impossible has been achieved. The Indians and the non-Indians have cooperated and compromised. Through these negotiations, something that I thought probably could never be completed has been accomplished.

The bill before you today makes this possible. It is the decent and the fair and the honest way to deal with both the non-Indians and the Indians in southwestern Colorado.

Thank you very much for having us here.

[Prepared statement of Mr. Kroeger appears in the appendix.]

Senator WIRTH. Thank you very much, Mr. Kroeger.

Mr. Deremo.

STATEMENT OF LARRY DEREMO, BOARD MEMBER, DOLORES WATER CONSERVANCY DISTRICT, CORTEZ, CO

Mr. DEREMO. Mr. Chairman, my name is Larry Deremo. I am a farmer in Dolores County. I will receive water when the last reach of the Dolores project is completed.

I would like to have my written statement entered into the record. I have also supplied a written statement from another member of the Dolores Water Conservancy Board who could not be here today, Dudley Millard.

Senator WIRTH. Without objection, they will be in the record.

Mr. DEREMO. Historically, from a non-Indian farmer's point of view, I have always understood that not only was there a potential cloud over the water rights of the Dolores River, but the rights belonging to the friends and neighbors of the Mancos Valley where we are in real jeopardy because the river further down stream flows through the Ute Mountain Ute Indian Reservation.

I have also understood that when the Dolores project was being planned, water which was originally intended to be delivered to non-Indian land in the Dove Creek area, which my land is part of, was diverted to the Ute Mountain Indian land near Towaoc to satisfy the Indian water claims on the Mancos River.

I am testifying on behalf of the legislation because I believe it will allow us as taxpayers to commit our resources to a project that will benefit mankind rather than spend our money on expensive litigation. It will settle a longstanding dispute that has created doubt over the water rights and land values.

It will provide the Ute Tribes with the tools to develop their resources, giving them the opportunity to establish a self-sufficient economy, thus benefitting us all. Finally, it is an important factor in allowing the construction of the Animas-La Plata to proceed after these many years of delay.

Project water from the McPhee Reservoir is in lieu of the Winters Doctrine claims of the Ute Mountain Ute Tribe has to the Mancos River. We all, Indians and non-Indians alike, have understood this to be the case.

The agreement provides, among other things, that when Dolores project water is delivered to the Ute Mountain Ute Indian Reservation, they will receive certain project reserved water rights and, in turn, will relinquish their reserved rights claims. To the Mancos and Dolores Rivers.

In 1977, 170 farmers in the Dolores project who have been farming dry land petitioned for water according to Colorado the Conservancy District Act asking for an allotment of water from the Dolores project. Based on this sale of water, the U.S. Bureau of Reclamation began construction in 1978. The first water began to flow in July 1987.

I have some pictures here that I would like to submit in evidence showing the land that is irrigated and the land next to it that is not irrigated. You can definitely see the difference the water makes.

The board members came out of the water petition hearing with a strong conviction that by accepting all water petitions, we had acted to protect the good project. Developments since the water began to flow this summer have reinforced that conviction.

Even though water deliveries were uncertain and did not begin until July 26 out of 83 land owners in the initial blocks have already installed 48 irrigation systems serving approximately 2,000 acres. Some of the very farmers who objected to the district's acceptance of the water petitions at the July hearing have Dolores project water irrigating their farms today.

These positive developments will undoubtedly pick up momentum with the expectation of a firmer and earlier supply of water next year. We are confident that formens will install 50 to 60 more sprinkler systems in 1988.

Recent land sales in our area demonstrate that the irrigated land is bringing from $300 to $500 an acre while the dry land is only bringing $225 to $325 per acre.

The Ute Mountain Ute Indian Tribe is an important part of the economic scene in southwestern Colorado. It is possible through the wise development of its water and land resources for the tribe to greatly expand and broaden its base of livelihood.

Therefore, any factor that affects the Indian economy directly affects not only Montezuma and Dolores Counties but all of southwestern Colorado.

Water is a key to the changing land environment which, from my point of view, the Utes have tolerated far too long. Nowhere can we find a more vivid example of how a water project and the use of its waters can truly enhance the environment than in Towaoc.

The Dolores project has created a common bond between the Ute Mountain Ute Indian Tribe and the non-Indian neighbors that have improved relations and promises mutual prosperity in the future. I trust that the Animas-La Plata project will do the same for the Southern Utes and their region.

I would like to conclude by urging the passage of the legislation and also urging that the appropriation dollars will follow.

Thank you for your time.

[Prepared statements of Mr. Deremo and Dudley Millard appear in the appendix.]

Senator WIRTH. Thank you very much, Mr. Deremo.

Mr. Colbert.

STATEMENT OF THOMAS COLBERT, PRESIDENT, MANCOS WATER CONSERVANCY DISTRICT; AND COMMISSIONER, MONTEZUMA COUNTY, MANCOS, CO

Mr. COLBERT. My name is Thomas Colbert, Mr. Chairman. I am here from the Mancos Water Conservancy District of southwestern Colorado on the Mancos drainage. Also, I am a county commissioner from Montezuma County.

We are concerned about all the streams and rivers that are affected by Indian claims, but most of all, today I want to speak to the one river that flows through the Mancos Valley and empties out through the Ute Mountain Ute Reservation.

I was sitting back there by my neighbor, Ernest House, who is the Chief of the Ute Mountain Ute Tribe. Hopefully, we can continue to sit together for many good years to come if this legislation becomes reality and we can get the claims settled on these streams and rivers, especially on the Mancos River where there seems to be the greatest claim or the best claim.

On the Mancos system today, there are 13,000 acres irrigated by non-Indians. They are irrigated by 200 land owners or irrigators. In the middle of the valley there are 1,000 people who depend upon the waters of the Mancos River. So, we have probably the largest stake in this legislation compared to anyone else at this point in time.

Of course, you know that the Treaty of 1868 gave the Ute Mountain Ute Tribe senior rights to most of the waters in the Mancos River. The tribe certainly, if litigated, probably would receive most of that water in the Mancos River.

The first non-Indian priority right was shortly after that in the year 1874. The white man came in and began to use the water. Ever since then, we have developed that land to the point where we are today with sprinkler systems and buried pipelines and the kinds of things that make crops grow to the point that we are irrigating 13,000 acres, in my estimation, of good farm land.

We would hate to see that destroyed, and those development costs have mounted over the years.

We discovered early on, though, that during the dry months in the Mancos Valley, we needed more water. So, in the 1940's, the Federal Government came in and built Jackson Gulch Dam which stores 10,000 acre-feet of water. This dam was built for the use of the National Park System and for the non-Indian irrigators in the Mancos Valley. No thought at that time was given to the tribal needs.

For over 100 years, the waters of the Mancos River, almost all of it, has been used by the non-Indian people in the Mancos Valley, and you can see where that has left the Ute Mountain Ute Tribe.

It has been apparent for many years that a settlement had to be reached that would ensure the tribes real water, both tribes. That has been way too long, in all of our opinions, in being accomplished. This is very necessary to provide for the economic well being and full self-reliance by the Indian tribes themselves.

In my opinion, they have to have water to be able to become self-sufficient citizens of the United States of America.

In December 1986, of course, you heard that the deal was cut. A cost sharing agreement between the Federal Government and the State and the Indian tribes and the local users and many more participants was struck. Most certainly, the Animas-La Plata and the completion of the Dolores project are the cornerstones of this effort.

When we look at the alternatives to this agreement and to these two projects, we don't feel that there is a choice. We feel that, through litigation, there would be many years of struggle and costs added to more years of uncertainty by both Indians and non-Indians. And that is no choice.

So, the projects provide the only viable solution for all of us in that part of the country. What the Animas-La Plata does and the Dolores, in that it is one of a kind, is settle once and for all the Ute Indian claims on all the waters that flow out of the State of Colorado.

Thank you, Mr. Chairman, for your time. I would be happy to answer any questions you may have.

[Prepared statement of Mr. Colbert appears in the appendix.]

Senator **Wirth**. Mr. Colbert, thank you very much.

When is the election, Mr. Kroeger?

Mr. **Kroeger**. December 8, next Tuesday.

Senator **Wirth**. How are you betting on the election?

Mr. **Kroeger**. Well, I would bet that it will pass.

Senator **Wirth**. And who votes in this election?

Mr. **Kroeger**. The voters are any qualified registered voter who lives within the district or any qualified registered voter within the State of Colorado who owns property within the district.

Senator **Wirth**. Will there be a number of absentees?

Mr. **Kroeger**. Yes, there are. It provides for absentees.

Senator **Wirth**. And you all vote in this?

Mr. **Kroeger**. We will.

Mr. **Colbert**. Mr. Chairman, I don't get to vote.

Senator **Wirth**. Why not?

Mr. **Colbert**. I live on the Mancos system and the Mancos drainage, and I don't live in La Plata County.

Senator **Wirth**. So, you are not betting on the outcome, either.

Mr. **Colbert**. Well, I am praying on the outcome.

Senator **Wirth**. Mr. Deremo.

Mr. **Deremo**. Sir, I am in the Dolores project, and I won't get to vote. However, I do have relatives, and I am going to insist that they vote.

Senator **Wirth**. So, you have been up there twisting arms, right?

Mr. **Deremo**. Yes, sir.

Senator **Wirth**. Are all those relatives alive? [Laughter.]

Mr. **Deremo**. I hope so.

Senator **Wirth**. Mr. Kroeger, Mr. Deremo, and Mr. Colbert, thank you all very much for joining us. We greatly appreciate your being here. Thanks ever so much for coming.

Our next panel includes Mr. James Decker from Taxpayers for an Animas-La Plata Referendum in Durango, Colorado; Dr. John Williams, Chairman of the Board of Directors of the American Rivers Conservation Council in Washington, DC; Mr. Edward Osann, Director of the Water Resources Program of the National Wildlife Federation; and Dr. Charles Olmsted of the Colorado Wildlife Federation in Denver.

Gentlemen, we thank you again very much for being here. You are familiar with the procedures we would like to pursue, and maybe the easiest thing to do might be to just move right down the list here and ask you to summarize your statements. They will be included in full in the record, and we will go in the order in which you are listed in the witness list: Mr. Decker, Mr. Williams, Mr. Osann, and Mr. Olmsted.

Mr. Decker.

STATEMENT OF JAMES DECKER, TAXPAYERS FOR THE ANIMAS-LA PLATA REFERENDUM, DURANGO, CO

Mr. **Decker**. Thank you, Senator Wirth.

I am James C. Decker. I am a professor of political science at Fort Lewis College in Durango and a member of Taxpayers for the Animas-La Plata Referendum. Together with Fred Kroeger, I am the other vote. I can guarantee you I will be voting on Tuesday against this project, and I am willing to explain why.

As a member of Taxpayers for Animas-La Plata Referendum, the referendum is, for the first time, on Tuesday. We have been waiting ten years for it and are delighted that we now have the opportunity since everybody in the world seems to be speaking for this project except the people who will be obligated on the contract to the United States.

As a member of this organization, we have no objections, Senator, to the Indian rights settlement as far as the amount of money that the Indians will be getting out of it, that is to say, the development funds of $60.6 million, nor do we object to the quantification. What we object to is the Animas-La Plata project itself as defined in the Definite Plan Report of 1979 and as altered in the Phase I and the Phase II sections.

Now, it has been said many times today that this project will reduce ill will. Since we are right in the middle of an election campaign, it is hard to perceive how that will happen.

In the Dolores project, 97 percent of the people on the repayment contracts supported that project. It has now degenerated into a law suit of neighbor against neighbor. I am willing to predict, Senator, that next Tuesday there will not be 97 percent approval. In fact, I would suggest to you that it is too close to call.

If I am right and we come out of here with a very close election, even should the supporters win and you pass this project and you fund it, there will be at least half the people who will be ingrates that do not appreciate this project.

The reasons we don't appreciate this project are as many as there are features of the project, but we call ourselves Taxpayers for the Animas-La Plata Referendum, because our main objection is taxpaying. There are environmental objections as well, and you will hear more of that from my colleagues.

In other words, we think that a project could be devised if this one is turned down that would supply the Indians with what they want with an on-reservation solution. Phase I of the present project has no facilities on the reservation. It is designed for some other purpose, whether it is to ship water out of the State or to sell it to whomever—there are no other foreseeable clients—or to build coal facilities in the future. The agricultural component, at least as far as the Southern Utes are concerned, is only involving 1,500 acres of agricultural land.

So, there are no features in this present project on the reservation, and we suggest there are alternatives that could do that and solve all of the other problems as well.

As far as the healing powers of this that you have heard about, that is, it reduces the ill will, I would like to make one more comment on that.

I would like to draw your attention, Senator, to the project repayment contract itself. There is in that contract a project coordinating committee. As a political scientist, I was interested in that. All decisions of that committee must be done by unanimous agreement.

Why is that? Because the three separate tribes, the entities in Colorado and New Mexico have so little trust in one another that they are going to require an arrangement where they must veto the actions of everybody else. Now, if that is an indication of the good will of this contract, I think we might consider that it doesn't achieve those objectives, and that is what my testimony says.

I would like to also point out—I was interested in the comments of Secretary Marchant and your comments, Senator, about keeping this bill on schedule. If it is not on schedule, a major fault of what would be the United States Government itself, it will not be completed in 12 years, and that can only produce more enmity—and I think that is my bell.

[Prepared statement of Mr. Decker appears in the appendix.]

Senator **Wirth**. That is right. Thank you. As a good professor, I can see you are used to operating within a constrained time frame.

Mr. **Decker**. But I didn't finish. [Laughter.]

Senator **Wirth**. Well, we will include your statement in the record in full.

Dr. Williams.

STATEMENT OF JOHN S. WILLIAMS, CHAIRMAN, BOARD OF DIRECTORS, AMERICAN RIVERS CONSERVATION COUNCIL, WASHINGTON, DC

Mr. **Williams**. Thank you, Senator.

My name is John Williams. I am very delighted, Senator Wirth, to be here today representing American Rivers and giving its testimony.

Let me start out by saying that my 5-page testimony which I have no intention of reading today has been signed off by several other organizations which would like to support it. I bring with me a letter signed by representatives of the American White Water Affiliates, the Western River Guides Association, the National Audubon Society, Friends of the Earth, and the Environmental Policy Institute that all support this statement on behalf of American Rivers. I would like to submit this letter.

Senator **Wirth**. They are all supporting the project, is that it? [Laughter.]

Mr. **Williams**. They are all supporting American Rivers' statement in opposition to the Animas-La Plata project.

Senator **Wirth**. I just wanted to make sure the record was clear, Dr. Williams. Thank you.

Mr. **Williams**. I also bring a resolution from the National Conference on Rivers which was held April 4, 1987, the only resolution passed by that conference at its annual meeting in April which calls for stopping the Animas-La Plata project and also that "alternatives to achieve just and equitable access and delivery of water for the Southern Utes and Mountain Utes Indians be sought and funded."

I would like to submit that for the record also.

Finally, my colleague at the Environmental Policy Institute, Dr. Brent Blackwelder, provided testimony at the House hearings held in September on the House version of this bill. I would like to submit his statement which includes a number of questions on the project as well as the Environmental Policy Institute's analysis of the project which I believe is the most single coherent statement that I have found on the project as a whole.

I would like to submit this for the record also.

Senator **Wirth**. Without objection, the materials will be included in the record.

Mr. **Williams**. Thank you.

Let me say that we have heard a lot today about this utterly remarkable agreement that has been achieved here. I would say it is utterly remarkable. A lot of people have become involved in these negotiations.

Certain rights of the Indians have certainly been considered, and we support the modest claims of the Indians for development moneys and water.

There has been a good deal of discussion with regard to irrigation water for non-Indian farmers. What is remarkable is that this project has been developed and the settlement has been developed with literally no consideration of the environment and the environmental impacts.

I would like to quote Mr. Kroeger who spoke just before me when he said "the impossible has been achieved." Indeed, the impossible has been achieved. If you take out one-third of the annual flow of the Animas River and the majority of the water in the summertime, and yet you don't have a negative impact.

Mr. Kroeger said the environmental impacts are very, very negative. Well, that statement I certainly agree with. The environmental impacts are very, very negative.

Now, the impacts are not only negative on the Animas River, but they are negative on the San Juan River down stream. I don't know if you have ever floated the San Juan River through the gooseneck section. This is a river that in the summertime depends on its water from the free-flowing Animas River up stream. It is a magnificent river on the National Inventory.

This river itself will be terribly degraded by the project. Not only will the rafting industry in Durango be seriously affected if not destroyed by Animas-La Plata, but the rafting down stream on the San Juan River also. My friends in the Western Raft Guides Association, Sherry Griffith, Bill Dvorak, tell me that the San Juan River is the second most popular river for floating in the entire Southwest. It is also the single most popular river for the private boater who goes down rivers.

The degradation on this river is something that I think is very serious. These are rivers I myself love and cherish, and this project will have a very negative impact on them.

My own statement goes into more detail with regard to the negative impacts on the flows of water in these two rivers, and that concludes what I want to say.

[Prepared testimony and additional material of Mr. Williams appear in the appendix.]

Senator WIRTH. Thank you very much, Dr. Williams.

Mr. Osann.

STATEMENT OF EDWARD OSANN, DIRECTOR, WATER RESOURCES PROGRAM, NATIONAL WILDLIFE FEDERATION, WASHINGTON, DC

Mr. OSANN. Thank you, Mr. Chairman.

My name is Edward Osann. I am the director of the Water Resources Program for the National Wildlife Federation. I won't attempt to read my statement but merely to summarize it and hit the high points.

The National Wildlife Federation is opposed to the enactment of this legislation in its present form, essentially not because we are opposed to a negotiated settlement, certainly, but because the settlement is premised upon the construction of the Animas-La Plata project and that, to us, appears to be the fatal flaw.

The Animas-La Plata project shares many of the deficiencies that are fairly well known regarding the Reclamation program, deficiencies that have led the Bureau itself to conclude that it is time to change its mission.

First and foremost, the project is a poor investment. It was authorized in 1968. It has been plagued by controversy for a good deal of that time. The Bureau itself has identified only 92 cents in benefits, and that is at a rather generous discount rate of 3.25 percent, for every dollar of cost for phase I of the project.

Now, some might say, "Wouldn't it be appropriate to depart from a very strict benefit-cost standard for a project that serves Indian economic development?", and we would agree.

But let's be clear. Animas-La Plata is a predominantly non-Indian project. The project will deliver approximately 200,000 acre-feet of water—I am just speaking in round numbers. The municipal and industrial deliveries would constitute about half of that. Those are fairly evenly divided between Indians and non-Indians, although it is anticipated that a significant share of the M&I water delivered to Indians will in turn be leased to non-Indians, and therein lies a big part of the controversy surrounding this legislation.

Turning to the agricultural component, it is nowhere near 50-50. About 80 percent of the lands to be served by Animas-La Plata irrigation water are non-Indian.

The environmental problems associated with this project will be addressed in some detail by others on this panel, and I won't dwell on them. I would point out that there is a loss of big game habitat, including the State's own Bodo Wildlife Area, and the mitigation for both wildlife and fisheries impacts of this project appears to be quite inadequate.

It is apparent to us, Mr. Chairman, that the project, and the implementation of the settlement agreement that involves the construction of the project, still face a host of intractable problems. Under these circumstances and faced with the prospect that the 100th Congress will adjourn without enacting this legislation or its House companion, we believe that the parties might want to give consideration to an alternative settlement, one that can bring more benefits to both tribes more quickly than S. 1415, even if it were signed into law today, and do so at far less expenditure of economic and environmental resources.

We would envision the main components of such an agreement to include the following: the tribal development funds, cost effective irrigation development, an allocation of hydroelectric power to the tribes, and additional funds for reservation infrastructure development.

Thank you.

[Prepared statement of Mr. Osann appears in the appendix.]

Senator WIRTH. Thank you very much.

Dr. Olmsted.

STATEMENT OF CHARLES OLMSTED, COLORADO WILDLIFE FEDERATION, DENVER, CO

Mr. OLMSTED. Mr. Chairman and members of the committees, thank you for the opportunity to present the views of the Colorado Wildlife Federation.

My name is Charles Olmsted. I am the director of the Environmental Studies Program at the University of Northern Colorado and I am also a member of the Board of Directors of the Colorado Wildlife Federation in Colorado.

The Colorado Wildlife Federation is Colorado's largest conservation/education organization with over 16,000 individual members throughout the State and the Nation. Many of our members reside near or within the project area or use the project area that is part of the proposed settlement.

The Colorado Wildlife Federation is opposed to the Animas-La Plata project because of the destruction of fisheries habitat on the Animas River and because the reservoir site will destroy what is now a Colorado Wildlife Area that is critical winter range for both deer and elk. More importantly, however, we are here to suggest a better way to satisfy Colorado Ute Indian water claims than S. 1415 currently proposes.

We are here because we are concerned that the Ute Indian Tribes actually get the water they need where they need it. As you know, all of the facilities to supply water to actual reservation sites were moved to phase II where they are non-Federal obligations. Phase II represents a cost of approximately $200 million with no one obligated to pay it.

In our view, this tells us that water will never be delivered to the sites where the tribes need it. Therefore, we suggest you offer to amend the legislation as follows:

For the Southern Ute Tribe, provide the Southern Ute Tribe water now directly in the Animas. This would be 10 to 12 years earlier than they will get it through the project.

The Southwestern Water Conservation District owns 600 cubic feet per second of water at the proper diversion point and could easily assign enough water to the tribe. The tribe could then use the water to irrigate their land along the Animas, and when their coal becomes saleable, a jointly funded—tribe, U.S. Government, coal company—gravity feed canal could be built to the Southern Ute reservoir area.

This immediate transfer of water would relieve the tribe of the project costs and operation, maintenance, and repair costs.

For the Ute Mountain Ute Tribe, provide the Ute Mountain Ute Tribe water out of the McPhee Reservoir immediately. This would help the Bureau of Reclamation dispose of the water that the farmer there don't want.

We also recommend implementation of the Soil Conservation Service salinity control project in the Mancos Valley, an approximately $6 million cost. This project will make available 10,000 acre-feet of water in the Mancos River just south of the town of Mancos.

This water would then flow through the heart of the reservation down to Towaoc. When the irrigation canal from McPhee to Towaoc is finished, the Ute Mountain Utes would then be getting water at two different points on their reservation. The irrigation canal is a part of the Dolores project.

We believe that these alternatives will provide the tribes with equal or greater quantities of water and in more useful locations at less cost than the present scheme. The Animas-La Plata is then not needed to satisfy the Indian claims.

If your committees wish to pursue these alternatives, the Colorado Wildlife Federation would be pleased to provide background material and any other assistance necessary to make these proposals work.

The adverse impacts on wildlife and fisheries resources of the Animas-La Plata project are many. The Bodo State Wildlife Area would be inundated by the project, and this is an important winter range for both deer and elk. The Colorado Division of Wildlife has stated within the decade that the Bodo Wildlife Area was their number one priority for acquisition for big game winter range.

Additional adverse big game impacts include loss of approximately 4,700 acres of mule deer habitat in the project area and replacement with only 2,500 acres and loss of approximately 2,230 acres of primary elk winter range.

There are also adverse fisheries impacts.

Thank you for this opportunity.

[Prepared statement of Mr. Olmsted appears in the appendix.]

Senator WIRTH. Thank you, Mr. Olmsted.

Do I understand what all of you are saying is that while each of you opposes the project, you believe that there are alternative ways of meeting the claims of the Indians. Is that correct?

Mr. OLMSTED. Yes.

Senator WIRTH. Why do we therefore have Animas-La Plata in front of us instead of what you would suggest, the cheaper alternatives that you are suggesting?

Mr. OSANN. Let me take a stab at that, Mr. Chairman. I think that Animas-La Plata, having been authorized 20 years ago and having not gone anywhere, was on the shelf and was seen by both the State water bureaucracy and the Bureau of Reclamation as a handy way to respond to the water rights claims of the Utes.

Senator WIRTH. Do you all agree with that answer?

Mr. OSANN. I would also point out that environmentalists were not brought into the negotiations to formulate the settlement agreement. Now, clearly, the organizations were not parties, but I am not aware of any particular effort to consult with any of the national or State conservation groups about the outlines of what would constitute an acceptable proposal.

Senator WIRTH. Mr. Decker, you are the only voter here.

Mr. DECKER. Senator, when I introduced myself as a taxpayer against the Animas-La Plata, I didn't mean only the local property taxpayer. This may sound very strange to your ears, but we are concerned about how much you are spending here in Washington, and we are concerned related to this project. There are people back home, and they are my associates, who think this is an outrageous Federal expenditure when you add to it the fact that $200 million is coming from the CRSP fund.

The outcome of all of this is that you are spending $6,000 of capital investment per acre for land that is marginally going to produce any profit.

Now, we know what trouble we are in here. We know there is a farm bill going on that is the largest in history and subsidizing land out of production, and we also know this is going to put more land into production, and I hate to see that kind of inconsistent Federal policy going on.

So, we are opposed to this project, but we know we have Indian obligations, and that is why we say fine on the Indian obligations. We don't know of any other obligations that can't be handled more cheaply and locally by local government operating as they should in their own individual interests and not needing the Federal handout.

So, we do indeed suggest a smaller alternative that would accomplish what we are obligated to and that is to settle the Indian problem.

Senator **Wirth**. You sound like an opponent of the project and a Reaganite at the same time. Is that right?

Mr. **Decker**. Senator, let me assure you I am a registered Democrat.

Senator **Wirth**. You are? I was hoping you would tell me you were a Reaganite and an opponent of the project. That would be an interesting combination of that kind of fiscal conservatism.

What do you expect to be doing next Wednesday?

Mr. **Decker**. The day after the election what am I doing? I expect to be asking the Animas-La Plata Conservancy Board to dissolve itself.

Senator **Wirth**. And then what happens in terms of the Indian water right question? That, it seems to me, is the reason that this is going anyway. How does that get solved?

Mr. **Decker**. Well, we have had a suggestion as long as we have existed. In the first year, 10 years ago, we suggested that there be on-reservation storage on the Southern Ute reservoir, that it could be satisfied by a gravity fed canal, and that would put the facility on the reservation.

In addition, this would be an Animas-La Plata project since it would come out of the Animas River, and it would also provide water for La Plata River beneficiaries in that it would give their river back, that is to say, La Plata and New Mexico could also be provided with water out of the Southern Ute reservoir. This is a 70,000 foot reservoir.

You see, our objection is they are doing it all backwards. They are building the wrong reservoir first. They should build the phase II reservoir first and phase II facilities on the reservation. It would be one-third the cost.

Senator **Wirth**. Mr. Olmsted, do you have a closing comment?

Mr. **Olmsted**. Just a couple of perspectives. I think we are faced with the inertia of the history of ways we have developed water in the West here once again, as Mr. Osann referred to. This was on the shelf.

I think virtually all water development attitudes in the West have focused on getting more water, trying to acquire more water, rather than using it effectively. In fact, some of the existing water law militates against using water efficiently.

Current irrigation use in the Mancos is only about 30 percent efficient. If we were to greatly increase its efficiency, we would have additional water available at considerably lower cost.

Senator WIRTH. Well, gentlemen, we thank you very much for joining us this morning and for your testimony. Again, the record will be left open for any questions which the committee may have of you or further comments which you might like to make.

Our next panel includes Mr. Renay Neely, a farmer in the Dolores project area of Cortez, CO; and Mr. James Isgar, a farmer in the Animas-La Plata project area of Durango.

Mr. Neely, why don't you begin, and then we will go to Mr. Isgar.

We are doing pretty well this morning. I might line the procedures up a little from here. I am going to have to leave a little after 11:30 at which point the staff will continue the hearing until we close that down.

Mr. Neely.

STATEMENT OF RENAY NEELY, FARMER, DOLORES PROJECT AREA, CORTEZ, CO

Mr. NEELY. Mr. Chairman, I want to thank you for this time this morning.

My name is Renay Neely. I am from Cahone, CO. My wife, Nita, and I own and operate land in both Dolores and Montezuma Counties. We have three boys of which two of them own land and farm with us. My wife was born and raised in the Yellow Jacket area which is referred now as the Fairview Block. I was born and raised in Cahone which also has water from the Dolores project.

I am presently Chairman of the Board of County Commissioners of Dolores County. I served 8 years on the Dove Creek Soil Conservation Board and 10 years on the Board of Farmers Mutual Telephone Company in Pleasant View. I am currently Secretary/Treasurer of Intercell Corporation which is a telecommuncations business located in Pleasant View and which has offices in Denver, CO, Phoenix, AZ, and Salt Lake City, UT. I am a board member of San Juan Bible Camp in Mancos, CO.

So, you can see I am well acquainted with southwestern Colorado, and I am interested in its economic well being.

My testimony today is based upon 32 years of farming in southwestern Colorado as a dryland farmer. I am told that my experience and the fact that I will be a sprinkler irrigating farmer this next season on the Dolores project have a bearing on the outcome of this legislation. I am not sure how that is, but I will let somebody else be the judge.

I watched with real anticipation as the first water was delivered in mid-June in the Fairview Block. You could immediately see the results of the crops of pinto beans and alfalfa hay.

Those who were able to use the water had substantial increases in their yield, some 1,300 pounds per acre as compared to a county average of 400 pounds per acre. They had some 3 and 4 tons of alfalfa hay as compared to a county average of 1 to 1.5 tons per acre.

The farmers in the full service area are really encouraged by what they see and are looking forward to the full use of the water next year. This year, we saw 48 systems in use, and I personally can count another 50 systems that will be in operation in 1988.

One farmer has 280 acres on which he has started planting trees and has installed a drip system to irrigate those trees. During the past 60 years, we have been locked into a pinto bean, a winter wheat, and an alfalfa crop. Now, with some water, we can have some diversification for these other crops.

On the other side of the coin, we have farmers in the Pleasant View, Hovenweep, Cross Canyon, and the Dove Creek areas waiting and wanting their water, but they are seeing it slip away by a few who do not want the water that they contracted for some 10 years ago. Parts of the project have been completely eliminated, and now appropriations for 1988 have been cut way back.

To me, it is real unfair to sign a contract with someone and then one party back out.

The people in the area have been looking forward to this project for some 50 years, and now it seems to be slipping away with only a partially completed system.

The towns and rural communities need a good dependable source of water which brings to light the great need for water to be delivered to the Ute Mountain Ute Indian Tribe and the town of Towaoc. I have been around and done business with these people all of my life, and they are totally dependent on other sources for their personal achievements, livestock needs in the agriculture industry of this great Nation of ours.

They have the Navajo Agricultural Products Industries that join them on the south and the Montezuma Valley and the dryland farmers to the north. With the continuation of the Dolores project, they can become part of the local economy in helping supply the agricultural needs of this great country of ours.

I want to thank you again for allowing me to be here as a farmer under this project.

[Prepared statement of Mr. Neely appears in the appendix.]

Senator WIRTH. Thank you very much, Mr. Neely.

Mr. Isgar.

STATEMENT OF JAMES R. ISGAR, FARMER, ANIMAS-LA PLATA PROJECT AREA, DURANGO, CO

Mr. ISGAR. Thank you, Mr. Chairman.

My name is Jim Isgar, and I am a farmer that will receive water under the Animas-La Plata project. Our farm geographically is within the boundaries of the Southern Ute Reservation.

I want you to know that we feel that the water is needed and affordable. Our annual rainfall is 15 to 18 inches, most of which comes in the winter with very little coming during the principal growing times.

It is necessary for us to have increased production to have a stable economy and to be able to develop more agricultural markets.

In response to the last panel ahead of us, I would like to make some comments about the wildlife. I don't have a doctorate in rivers or fish or anything, but I don't think it is necessary to have 8 years' education to know that you don't have wildlife or anything in the West unless you have water.

The impacts on the wildlife will be great. When you irrigate an additional 40,000-some acres, you create wildlife habitat. The deer and the elk and the birds all have to have water. When you irrigate lands, you create habitat for the deer and the elk.

The water in the lake obviously won't be good habitat for elk, but it will be habitat for fish. Speaking as a person who has farmed that land, for the last 5 years I leased to the Division of Wildlife Property. It is not a winter or summer range for the deer and the elk. They pass through there in the winter, spring, and fall, but they don't winter there. Even attempts by the Division of Wildlife to keep them there by feeding them haven't kept them there in the winter.

So, I really feel there is basically no detrimental impact on the wildlife, and you are tremendously increasing the habitat for the wildlife by irrigating the lands.

I just can't understand that argument. You don't have anything in the West unless you have water, including wildlife.

The plan for the Animas-La Plata buys other property to replace the land that will be flooded which will undoubtedly be better habitat than will be replaced.

In response to the fishing and the rafting, I would like to point out that the majority of that takes place south of Durango on land that is owned by private individuals and the Ute Tribe. It is not like rafting through a wilderness area or a wildlife preserve. It is property owned by individuals and the tribe, including our family.

Another issue I would like to address is the issue of subsidies. I know there has been some concern about farmers receiving subsidized water when they are raising subsidized crops.

In dryland farming, we don't have much alternative. We are almost forced to raise subsidized crops. If we have water, we have the alternative that we won't be raising crops that receive Federal subsidies. The people in our area who do have water now raise basically no program crops, the crops that receive farm subsidies. I think that is an important point for the people who are concerned about that.

Another point on subsidies is, I guess, a subsidy to one person may be a benefit to somebody else. I kind of feel like all water that runs down our rivers into the power generation facilities is subsidizing somebody else's power.

About 25 percent of the water in the Colorado River comes from our section of Colorado, and it is turning turbines to make electricity to make cheap power for a lot of consumers in the lower basin States. We want to see some of those revenues from our water come back and build something for us.

I don't feel like we are taking money out of the Federal Treasury to do that. It is our water that makes that power, and that is what we want. We want some of our money back, and we would like to be able to use some of our water.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Isgar appears in the appendix.]

Senator **Wirth**. Mr. Isgar, we thank you very much for being here. Mr. Neely, we thank you for being here. We greatly appreciate your concern and involvement in the issue.

Again, the record will remain open for any further comments you might like to make or questions from the committee.

Mr. **Neely**. Thank you.

Senator **Wirth**. Gentlemen, thank you very much.

Mr. **Isgar**. Thank you.

Senator **Wirth**. Our next witness is Ms. Linda Lazzerino, Director of Government Relations for the American Public Power Association.

Ms. Lazzerino.

STATEMENT OF LINDA LAZZERINO, STAFF ATTORNEY, PLATTE RIVER POWER AUTHORITY, FORT COLLINS, CO, ACCOMPANIED BY MARTY KANNER, LEGISLATIVE REPRESENTATIVE, AMERICAN PUBLIC POWER ASSOCIATION

Ms. **Lazzerino**. Good morning, Senator.

First, I would like to correct the agenda. I am not the director of government relations for APPA. I am an attorney for the Platte River Power Authority in Fort Collins, Colorado.

APPA is represented here today by Mr. Marty Kanner who is at my right.

I am here today on behalf of the Colorado Energy Distributors Association which reprpesents 117 municipal electric systems, consumer owned systems, and State agencies located in the six States of Colorado, Wyoming, Utah, New Mexico, Arizona, and Nevada.

The views I will express today are also shared by the Colorado Association of Municipal Utilities, by Platte River Power Authority, and by the American Public Power Association.

Our concern today with this bill is exclusively limited to the provisions relating to the financing of the Animas-La Plata project which is a participating project of the Colorado Rivers Storage project. CREDA members purchase almost 90 percent of that power and, therefore, are always interested in any action by the way of legislation that may affect the rates for that power.

The power users, as the water users, have anticipated since 1968 the construction of the Animas-La Plata project. They have stood ready to pay their traditionally allocated share. However, they strongly oppose what amounts to a unilateral change in the provisions of the purchase contract. Those provisions have been the standard for not only CRSP projects but for Federal water projects nationwide for many years.

Our specific objection is to the language contained in section 6(b). That section provides for repayment of irrigation costs in 30 equal annual installments.

This straight line repayment methodology shortens the repayment period, rejects longstanding policy of repaying highest interest bearing costs first, and removes the flexibility that the government now has to levelize power rates. This change could result in substantial increases in rates paid for power produced from CRSP and, without justification, would breach a longstanding agreement.

The Animas-La Plata project contains no power features, but according to August 1986 figures of the Bureau of Reclamation, power users, in answer to the gentleman who was just speaking earlier, will pay almost $227 million of the then-anticipated $392 million total irrigation costs. This is the result of an historic agreement that was brought about to achieve the ultimate development of the CRSP.

We would like to acknowledge our side of that agreement, and ask only that the other side of the bargain be kept, that the support of irrigation be kept on the same terms as originally intended.

Thank you.

[Prepared statement of Ms. Lazzerino appears in the appendix.]

Senator WIRTH. Thank you very much, Ms. Lazzerino.

Can you tell me if the construction of Animas-La Plata would in any way affect the cost of electricity that your members buy from the Power Marketing Administration?

Ms. LAZZERINO. The Western Area Power Administration has issued a letter that says under the current conditions, under the costs that were then anticipated, 1986 costs from the Bureau of Reclamation, under the same timing, assuming that there are no other projects in the Colorado—under a number of assumptions, there will be no impact on the rates.

We have the same concern that a number of other witnesses have that the project will not remain on schedule and that this will be a precedential decision that will find itself applied to other power projects. So, in those two respects, we think there is a probability of a rate increase both in CRSP and a probability of that precedent spreading to other power projects.

Senator WIRTH. Well, thank you very much, Ms. Lazzerino, for being with us this morning. We appreciate your testimony, and any further comments that you might like to make or that the American Public Power Association might like to make would be welcome for the record.

Mr. KANNER. I would only add, Mr. Chairman, that you may remember earlier this year when the Senate Budget Committee reported their original budget, there was a proposal contained in there for a similar change or alteration in the repayment terms for Federal power projects and specifically for the irrigation assistance payments.

You were greatly helpful in the effort to remove that provision from the budget. APPA is extremely grateful for your efforts in the past and your recognition of the inequity and unfairness of that proposal at that time and would simply ask for similar treatment at this time.

Senator WIRTH. Well, thank you very much. We appreciate your all being here.

Our eighth panel this morning includes Mr. Herrick Roth, head of the Colorado Forum in Denver, CO; Mr. Jerry Kempf, vice president for Government Relations, Colorado-Ute Rural Electric in Montrose, CO; Mr. Larry Simpson, vice president of the Colorado Water Congress in Denver; Mr. Fred Klatt, mayor of Durango; Mr. Bud Deering, Commissioner of La Plata County of Durango; and Mr. David Potter, president of the La Plata Electric Association in Durango.

Gentlemen, thank you all very much for being here. Mr. Roth, why don't we start with you.

Mr. ROTH. We do and we don't. Before you start the clock, I did send in two names. The other was George Orbanek. For some reason, we are not both on it. We will share five minutes, but I don't want the clock to start until we get that understood. Is that all right? [Laughter.]

Senator WIRTH. Mr. Orbanek, you are, of course, more than welcome. We are delighted to have you here. If I am correct, you are from Grand Junction, Colorado. You will not be voting in next Tuesday's election.

Mr. ORBANEK. I won't, sir.

Mr. ROTH. If it is all right with you, we call your attention only to the reverse side of the letterhead of our submission of testimony which is part of your record or will be, and on the back side are the names of all the people and who the Colorado Forum is, because the Colorado Forum has been working on this as what we call the public entity.

We have not had precise water management or other kinds of relationships to this that other groups have had. Therefore, we think we have a very broad perspective of what we are speaking about.

So that we will have both western and eastern Colorado in our statement, Mr. Orbanek is going to lead off, if that is agreeable.

Senator WIRTH. We know of your efforts, Mr. Roth, and we greatly respect and appreciate them, and the clock is ticking.

Mr. Orbanek.

STATEMENT OF GEORGE ORBANEK, COLORADO FORUM, GRAND JUNCTION, CO

Mr. ORBANEK. Thank you, Mr. Chairman.

I appear with Mr. Roth as members of the Colorado Forum. We have submitted written testimony, and I would like to add just a very few short personal comments.

My name is George Orbanek. I am editor and publisher of the Grand Junction Daily Sentinel. As such, I am not the most likely person to be here today offering testimony in support of this very important piece of legislation.

Grand Junction is often characterized as the capital of Colorado's western slope. It is the largest city in western Colorado and is located approximately midway between Denver and Salt Lake City.

Our newspaper circulation area extends to Moab, UT on the west, Telluride, CO to the south, Meeker, CO to the north, and just short of Aspen, CO to the east. I dare say that the Daily Sentinel circulation area encompasses more square miles than some eastern States.

That said, our circulation area falls many miles short of southwestern-most Colorado, the part of the State in which the Animas-La Plata project has long been authorized for construction. Durango, CO, the largest community in close proximity to the project area, is approximately as long a drive from Grand Junction as Denver is to the east and Salt Lake City is to the west.

Because of vast geographic distance, Grand Junction residents will derive no direct economic benefit from the construction of

Animas-La Plata. Were my appearance here today based on the economic benefits a major Federal reclamation project would bring to my primary readership area, I would be here in support of a couple of other Federal reclamation projects, the West Divide and San Miguel projects that Congress authorized for construction in the same year, 1968, that it authorized the Animas-La Plata project.

But I am not here in support of West Divide and San Miguel. To be perfectly candid, those two projects have no defensible rationale.

In saying that, I am revealing a personal bias. I am a Colorado outdoorsman with a particular affinity for fishing. As such, I have a near-reverential regard for what I feel is the priceless nature of free-flowing rivers and streams. I have never been a presumptive supporter of major Federal reclamation projects.

My personal feelings, of course, are immaterial to the subject matter at hand. In similar testimony before the House, I stressed that what is at stake here is nothing less than a moral imperative, namely, the Federal Government's responsibility to fulfill its trust obligations to the Native American peoples of this land.

I urge you to keep that fact uppermost in your mind and give quick support to this critical piece of legislation.

Thank you very much.

[Prepared statement of Mr. Orbanek appears in the appendix.]

Senator WIRTH. Thank you, Mr. Orbanek.

Mr. Roth.

STATEMENT OF HERRICK S. ROTH, COLORADO FORUM, DENVER, CO

Mr. ROTH. Senator, you know me well enough that I would like to answer everything that went before and everything that is going to come after the last panel, because there you have a very technical description. I can't answer it all.

However, in the panel that appeared that was negative to this from Colorado, including Mr. Decker's testimony, if you look at that, it is filled with flaws. Not only is he a professor who misspells the word "desperate," but he also uses the wrong language in terms of what the cost of this project would be if it is not fulfilled.

We call your attention in our testimony to what I would call our executive summary. I only say to you the executive summary is found on page 13 of the testimony, and then I would look at the addenda and read A-5. That is the real responsibility.

I would say to you that the Indian tribes have been involved in this, and to sit here and hear people act as if the Indians themselves have not consented to this agreement, as if they are not the neighbors, as if they are not part of the discussion, as if they are not equals with all of us is appalling to us.

We are here for more than just the Indian tribes, but we must tell you—and I wish Senator Bradley were here, because I sent him a special letter. I went to school with Oglala Sioux and he wants to give part of the Black Hills, my home territory, back to the Sioux Tribes. Indeed, if that could happen, that should happen, because I know what Battle Mountain is and what Sitting Bull and Crazy Horse were.

I am also saying to you here is an actual negotiated settlement in hand that the Senator from New Jersey and all of you in the U.S. Congress have the greatest obligation to fulfill.

The greater Federal right is not all of the law of the river compacts. The greater Federal interest is what President Teddy Roosevelt and the western Senators at that time subscribed to, the establishment of the reclamation of the western part of the United States, and that included every tribe of interest in this whole institution.

But here we have a negotiated settlement between eight parties, local people, two State governments, cost sharing. Have you had a cost sharing agreement that offers you $130-plus million from two States whose ability to pay is considerably less than the Federal Government itself and, at the same time, the two Indian tribes are out there at the table. That is very significant.

The Colorado Forum is not in this by accident. It is in it for a purpose, and we have been working on it for 5 years. We know that the business interests of southern California and Arizona are going to be more on the side of conscience in this than the water management people that you are going to hear from in the next panel.

Thank you.

[Prepared statement of Mr. Roth appears in the appendix.]

Senator Wirth. Thank you very much, Mr. Roth.

Mr. Kempf.

STATEMENT OF JERRY KEMPF, VICE PRESIDENT FOR GOVERNMENT RELATIONS, COLORADO-UTE RURAL ELECTRIC, MONTROSE, CO

Mr. Kempf. Mr. Chairman, my name is Jerry Kempf. I am Vice President for Government Relations with Colorado-Ute, and I would like to ask that my comments as submitted, as agreeable with the rules of Congress, and be made a part of the record.

I am not going to read my statement. I would just like to make about three comments.

Number one, you have heard from some of the Federal power users, we also are a Federal power user. We feel th[illegible] there are some people who are jumping at some shadows in anticipating costs that do not seem to occur.

The Western Area Power Administration has evaluated the repayment schedule that is embodied in S. 1415 and has indicated, as has been indicated in previous testimony, that the impact is not going to be significant on power rates. We as a major power supplier and the power supplier in this area have to agree with that and, in fact, support the amortization schedule.

I would like to thank you for the opportunity to be here, Senator.

[Prepared statement of Mr. Kempf appears in the appendix.]

Senator Wirth. Thank you very much, Mr. Kempf, and your brevity is greatly appreciated.

Mr. Simpson.

STATEMENT OF LARRY SIMPSON, VICE PRESIDENT, COLORADO WATER CONGRESS, DENVER, CO

Mr. Simpson. Thank you, Senator.

I am Larry Simpson, General Manager of the Northern Colorado Water Conservancy District that serves the northeastern quadrant of the State and an officer in the Colorado Water Congress. I am here representing both of those entities today.

I have submitted written testimony and would ask that that be included as part of the record.

I would like to expand on that only very briefly in that I represent a reclamation project which has been in existence for 50 years. This project, in addition to being repaid to the Federal Government from both water and power revenues, has brought to the U.S. Government tremendously increased tax revenues because of the increased gross product from that region.

In addition, it has provided tremendous environmental and recreational enhancements to our region which you are very familiar with. The agricultural areas have provided migratory water fowl habitat second to none in the United States, to my knowledge.

The area that was developed for that project, while it was not contemplated originally as a recreation project, has developed to the point where Congress has seen fit to designate it as a National Recreation Area.

The reclamation water projects historically have been environmental and recreational enhancements. I think that needs to be kept in mind as we listen to people who object for their specific special interests or in the event of those individuals who have been hired to come here and object on behalf of various agendas.

I would just like to say that northern Colorado, while we receive absolutely no benefit from this project at all, supports it wholeheartedly, and the Colorado Water Congress which represents the entire water user community of the State does likewise.

Thank you.

[Prepared statement of Mr. Simpson appears in the appendix.]

Senator WIRTH. Thank you, Mr. Simpson.

Mr. Klatt.

STATEMENT OF HON. FRED KLATT III, MAYOR, CITY OF DURANGO, DURANGO, CO

Mr. KLATT. Mr. Chairman, I have submitted a written statement for you that I am sure will be given due consideration in time. I would like to make just a couple of remarks in addition, if I may.

The first thing I would like to say is that a recent study that I went over indicated that of all the elected bodies in our country, municipal officials carry the highest credibility, primarily because we have daily touch with our constituents. I would point out to you that part of the documentation that I submitted today is a resolution passed by the Durango City Council unanimously endorsing this project and stating that the city council favors a vote of approval for the Animas-La Plata.

I think that we will be celebrating in a slightly different manner next week than some of the earlier people may have indicated to you on the vote coming up.

One other subject I should bring up is the fact that the economy of Durango, my home town, is based on tourism. It is the name of the game. It is all we have in Durango at this time.

For us to look at this project as an alternative to tourism, thereby in some way degrading our pristine environment that we have right now, that fouls up the phenomenal hunting we have in the fall, which brings a lot of money into Durango's tills, is ridiculous. It is an asinine assumption to make that we are going to trade our environment for a project of some kind.

I would assure you that the local people in Durango do not feel this is degrading to our environment, to the wildlife, or to the fishing waters that set State records. That statement is completely untrue.

I thank you very much for your time and the opportunity to speak to you today.

[Prepared statement of Mr. Klatt appears in the appendix.]

Senator WIRTH. Thank you, Mr. Mayor.

Mr. Deering.

STATEMENT OF BUD DEERING, COMMISSIONER, LA PLATA COUNTY, DURANGO, CO

Mr. DEERING. I thank you, Mr. Chairman, and the members of your staff.

My name is Bud Deering. I am the Chairman of the Board of County Commissioners, La Plata County, CO.

The Commissioners of La Plata County have long recognized the need for the Animas-La Plata project. For approximately the last 18 years, they have gone unanimously on record for the project. One of those was my father.

As you have heard earlier from other gentlemen on the panels, they have been with this thing for a long time. Fred Kroeger has been involved with it a great deal of time. Jim Isgar's father has come back here and testified on behalf of the project over the years. Leonard Burch's father, the Chairman of the Southern Ute Tribe, and his brother have been involved as chairmen in the past.

This is not something that was conceived in a very irrational, rapid manner. The divisiveness that you would normally expect on a water issue is absolutely not there. Mr. Decker is totally incorrect.

This will not cause divisiveness. It will not destroy the unanimity that we now have no matter what the vote is next Tuesday, and I will be voting, and I will be celebrating because of the victory, as will Mayor Klatt.

The County Commissioners have passed a resolution similarly in recent weeks. As a County Commissioner I am responsible, for one, for all the residents within our county, including the Southern Ute brothers and sisters who are on the reservation. We have worked hand in glove with those tribal members and with the tribal council.

We have worked with them on roads, we have worked with them on airports, we have worked with them on land for our 4-year college that is State funded, and we have worked with them on jurisdictional issues. We have never had a problem. In the past, we have had total cooperation from all members of the tribe as has my brother Commissioner over in Montezuma County from the Ute Mountain Ute Tribe.

There has only been one area over the years where we have had the real potential for a parting of the ways, and that was the water issues and the settlement of the Indian water rights. The tributaries of the San Juan River into San Juan County, NM and all our tributaries in the southwestern part of Colorado serve the municipal, domestic, agricultural, and industrial needs that we have in that part of the State.

It was not by accident that you had such a diverse group come together. We have the tribal group, we have the water districts, we have the local city and county governments, we have the State government, and we now have the backing of the Federal Government.

It would appear to me that the Congress at this time has to step forward, look at this project on the record, and with any good hope, it will be approved.

The Animas-La Plata project is the heart of the negotiated settlement that has been entered into. The Animas-La Plata project provides secure water for all our citizens. The project will give us continuous irrigation to 70,000 acres, whereas we now have 10,000.

I might point out on one of the previous statements in a negative vein that the Indian solution is a short-term solution that they proposed, and I am always amazed how, at the eleventh hour, people come forward and come up with all these alternative solutions when there has been a tremendous great need for the project and a tremendous great need to get a solution immediately.

I would only add that the Indians know they need water. The Indians are our best friends, quite honestly, and they are willing to work with the agricultural community, and they have entered into this agreement so that we can do both in a logical manner and fund it from joint funding from all the entities to bring this to fruition after we have worked on it for so many years.

Thank you, Mr. Chairman, for the opportunity to speak to you today, and I would respectfully request that my statement be made a part of the record.

[Prepared statement of Mr. Deering appears in the appendix.]

Senator WIRTH. Thank you very much, Mr. Deering.

Mr. Potter.

STATEMENT OF DAVID POTTER, PRESIDENT, LA PLATA ELECTRIC ASSOCIATION, DURANGO, CO

Mr. POTTER. Thank you, Mr. Chairman.

Mr. Chairman, I am the General Manager of La Plata Electric Association. We are the rural electric cooperative that serves the area we are talking about.

We have a unique situation. We serve towns, rural areas, and the Indian tribe and have a very good relationship with the tribe.

As a rural electric cooperative, we are kind of a small democracy. All of our board of directors are elected by the members to serve on their behalf in running the cooperative, and our board of directors looked very carefully at the project and determined that there were some very good economic benefits to our members from the project in the jobs that are created and the revenue. We have a sagging economy in our area, like many parts of the West, and we looked at it from that perspective.

I would like to say here—I don't think it has been said by anybody—that as a businessman in Durango, I am involved in many things, economic development, Chamber of Commerce, different clubs, and so forth. It is my perspective from what I have seen in every business, the Chamber of Commerce, all the real leaders in our community support this project. I don't think you have heard from any leader in the community against the project.

So, I would urge you to pass this bill as quickly as possible.

Thank you.

[Prepared statement of Mr. Potter appears in the appendix.]

Senator **WIRTH**. Well, gentlemen, we are deeply appreciative of your being here.

Let me ask you if any of you have further comments that you might like to make or responses to other issues that have been raised this morning.

Mr. Mayor.

Mr. **KLATT**. Senator, one thing I should have mentioned before is that it seems in many cases that the tribe is a separate entity in some way, and perhaps legally it is. I can't stress too much, however, how much the tribe is part of our society. It is a full-fledged member and is an important, integral part of what goes on in southwestern Colorado, both Indian tribes as a matter of fact.

On a number of occasions today, the tribes have been set aside in some way as if it is a separate society. In many respects, that is the truth, but I also want to stress very strongly that they are part of Durango's economy and we feel very strongly that the project should be built from the standpoint of the tribe itself and that progress should be made on this bill in some way to try to do something for their good, because that will benefit the rest of southwestern Colorado also.

Senator **WIRTH**. Mr. Deering.

Mr. **DEERING**. Thank you, Mr. Chairman.

The only thing I would like to add—and we have touched on it peripherally, many of us—is the environmental concerns.

I don't think that even if you bring up such things as the coal development which would solve a tremendous amount of the tribal unemployment or any of the other environmental issues or effects on the wildlife that you are going to find that there is another group of people who are more naturally attuned to the protection of the environment than the Indian nations. They absolutely have lived with this long before the Sierra Club or others were ever thought of or invented.

The Indians are the best friends of the environment, I believe, throughout the United States or any other nation, including Canada and others.

The other thing is I have spent 21 years in Federal service, 9 years in private industry, and approximately 6 years in local county government as a staff person and now a county commissioner. I have never seen an issue where so many people with so many different interests were able to sit down and work out a compromise that was for the benefit of all.

I believe this is the key and I think it would be the model or would set a model for the other States throughout the western

United States to solve some water problems that we have lived with most of our lives.

Thank you.

Senator WIRTH. Mr. Roth, we will give you the final word.

Mr. ROTH. Thank you, Mr. Chairman.

A point was made by one of the preceding speakers about discount rate and the generosity of the Department of Interior now coming up with a benefit factor of 92 cents on the dollar. That is based on a 10.5 percent discount rate. If you want to go back to the CRSP project, if you want to go back to the old Bureau's discount rate of 3.5 percent, the beneficial effect of this project is $1.61.

Now, that figure has to be clarified in the record, so I want to emphasize it.

Second, in our testimony, because Mr. Decker kind of poo-poos it, about coming up with a figure of in excess of $525 million that the Federal Government itself would be obligated to pay in the event this project is not made has been based on statistics, among others, that have come from a very thorough report by a member of the same faculty, Dr. Bernard Anderson at Fort Lewis College.

We have taken the basic consumer facts from him. We have taken over a 70-year period of Winters Doctrine rights and applied less than minimum wages to productivity on agricultural lands that are irrigated against agricultural lands that are dry lands, and we have come up with figures there economically plus the value of land based on the present evaluation that the county commissioners in La Plata County do now assess, and we come up with a figure in excess of $500 million.

The penalty provisions in that, if you look at them very carefully, might only amount to $100 million of removing the white settlers from the present lands and then the litigation costs.

If you would look at that very carefully, we would like to emphasize that for the record, because I think the alternative to this is a negative alternative, and that is what we want to emphasize. The alternative here is a very positive alternative.

Thank you so much for giving us such a generous share of today's time.

Senator WIRTH. Well, thank you all very much for coming. We greatly appreciate it. As I pointed out earlier, the record will be open until December 18 for further comments you all might like to make.

Mr. ROTH. Will Senator Bradley's questions be sent to all of us so we can answer them? Is that the idea?

Senator WIRTH. I can't speak for his questions as to whom they may be addressed.

Mr. ROTH. OK, thank you.

Senator WIRTH. The final panel this morning includes Mr. Ralph Hunsaker, an attorney with O'Connor, Cavanagh, Anderson, Westover, Killingsworth and Beshears in Phoenix, AZ. He is accompanied by Mr. Alan Kleinman, Director of the Arizona Department of Water Resources in Phoenix; Mr. Dennis Underwood, Executive Director of the Colorado River Board of California in Los Angeles; and Mr. Jack Stonehocker, the Director of the Colorado River Commission of Nevada in Las Vegas.

Gentlemen, we thank you very much for being here.

As I suggested earlier, I have to do a transition at this point, and I will leave the final panel to Russell, if I might, and counsel will carry out the rest of the hearing.

Gentlemen, let me thank you on behalf of the committee for coming, and your testimony will be included in full in the record. Thank you all very much for being here.

Mr. BROWN. I would note for the record that the rules of the Committee on Energy and Natural Resources require that a member be present in order to conduct a hearing. Inasmuch as no member of the committee is present, the hearing is adjourned.

However, the chairman has instructed that staff receive statements and that a transcript of the proceedings be kept. In the interest of continuity and the provision of a more complete record, the transcript of these proceedings will be inserted in the official committee hearing record at the appropriate point.

[Whereupon, at 11:47 a.m., the committees adjourned, to reconvene subject to the call of the Chair.]

ADDENDUM

Mr. BROWN. We would be pleased to hear from Mr. Hunsaker now.

STATEMENT OF JACK STONEHOCKER, DIRECTOR, COLORADO RIVER COMMISSION OF NEVADA, ACCOMPANIED BY LAWRENCE LINSER, DEPUTY DIRECTOR, ARIZONA DEPARTMENT OF WATER RESOURCES, AND DENNIS UNDERWOOD, EXECUTIVE DIRECTOR, COLORADO RIVER BOARD OF CALIFORNIA

Mr. STONEHOCKER. Mr. Hunsaker was unable to be here today due to last minute pressures in the State of Arizona.

I am Jack L. Stonehocker, Director of the Colorado River Commission of the State of Nevada. I represent the State of Nevada. However, today, I am also appearing on behalf of the Arizona Department of Water Resources and the Colorado River Board of California.

These agencies have the responsibility to speak for their States on policy with regard to the management and use of the Colorado River.

I am accompanied by Lawrence Linser, Deputy Director of the Arizona Department of Water Resources, and Dennis Underwood, Executive Director of the Colorado River Board of California.

We have previously submitted a complete testimony, and we will only summarize briefly what we have given you.

The Colorado Ute Indian Water Rights Final Settlement Agreement of December 10, 1986 represents a complex and apparently comprehensive resolution of Winters Doctrine water rights for the Ute Mountain Ute and Southern Ute Tribes on the stream systems involved.

Two important principles regarding off-reservation use within Colorado are part of that settlement: first, the requirement that Winters rights be subject to State administration of water rights and, second, subordination of the priority dates of each Winters right to protect junior appropriators. We feel that these two principles represent a significant advance for the administration of Winters rights, and we believe they should be considered in every settlement of this character.

Unfortunately, priority dates and administrative problems have not been addressed, and the rights of junior appropriators have not been protected in the settlement agreement with respect to off-reservation use of tribal water outside Colorado.

We firmly believe—and the discussions we have attached to this statement show clearly—that the interstate and inter-basin transfers of Winters water rights contemplated by the settlement agreement, S. 1415, are inconsistent with, are not permitted by, and in fact are barred by that longstanding body of interstate compacts, international treaties, United States Supreme Court decisions and decrees, Federal and State statutes, and contracts collectively known as "the law of the river."

Running through the law of the river is the basic theme of protecting the rights and interests of the two basins and of each of the States to the use and priorities of their appropriated share of Colorado River water. The apportionment and priority scheme is comprehensive in dealing with the waters of the river, designates quantities and priorities for use within each of the States, and identifies which State will be charged for the use involved.

A basic premise of the river's priority use system established by the law of the river is that the water which cannot be beneficially used by a Colorado River right holder becomes available to meet the water needs of lower priority right users which may not otherwise be met. By the same token, unused apportionments of one State can be beneficially used by another State until such time as those waters are needed by the State to which the water was appropriated.

Given that the river has been fully apportioned and that the States total apportionments and the delivery obligations pursuant to the Mexican Water Treaty far exceed the river's long-term supply, the selling and leasing of the State's unused apportioned water for use in another State by any entity is inconsistent with the law of the river and would severely injure other river users. It would allow a party with no Colorado River water rights to obtain priorities to and take Colorado River water away from entities and States with longstanding rights.

As an example, one only needs to review the testimony and reports leading up to the passage of Public Law 90–537, the Colorado River Basin Project Act, which, among others, authorized the Animas-La Plata project and the Central Arizona project.

The viability of the Central Arizona project was and is dependent upon receiving all water that is not needed in the upper basin. If this water is sold, it would diminish the yield of the Central Arizona project. The Congress was keenly aware of this and did not intend this result in its authorization of the project.

The law of the river requires that the user basin or user State be charged with the use of water under the water accounting system it establishes. It does not recognize or establish any procedures whereby such transfers could be accommodated or dealt with or whereby the transferring State could be charged for the water use, nor is there any process for evaluating priorities across State lines in accommodating the impact on those and other States.

We strongly believe that the concept of interstate and inter-basin sales of Winters water as provided by the settlement agreement and S. 1415 is ill-conceived and will only serve to disrupt the entire structure of rights and priorities to and use of Colorado River water developed and relied upon over the past 65 years since the Colorado River Compact was agreed upon.

We ask that the legislation be amended to prohibit interstate and inter-basin sales to protect individuals not signatory to the settlement agreement. We have attached proposed amendments to sections 4, 5, and 11 of S. 1415 to accomplish these results.

We thank you for the opportunity to provide this testimony and would be happy to respond to any questions you may have.

[Prepared statement of Mr. Hunsaker appears in the appendix.]

Mr. BROWN. Thank you very much.

As the chairman indicated, there is the possibility that individual witnesses will receive further questions in writing from various members of the committees and from the chairmen I would encourage all of you to respond to those questions as quickly as possible if, in fact, you do receive them.

Thank you all very much.

The proceedings are completed.

[Whereupon, at 11:53, the proceedings were completed.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF THE
HONORABLE TIMOTHY E. WIRTH

Concerning S. 1415
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987

December 3, 1987

Water has played a dramatic role in Colorado's history. We live in a state that is arid, where climatic conditions can change dramatically over just a few miles. Water is the "magical ingredient" that has enabled cities to grow along the front range and agriculture to prosper on the eastern plains and the western slope. Because of its importance to our quality of life and our economy, water also has been the source of many long and contentious disputes. For the most part, those battles have been fought in the courts and legislatures, and many likely will be resolved there in the future.

But this legislation represents an exception to that rule. Like other Indian tribes in the West, the Colorado Ute Indian tribes have rights to water in the streams that run through or border their reservations. Those water rights date from the year when the tribes' reservations were established, and encompass sufficient water to fulfill the purposes of those reservations --

to create a homeland for the Southern Ute and Ute Mountain Ute Indian tribes.

Attorney General Woodard, was a leader in the negotiations that led up to this legislation. He will testify this morning that the exercise of the tribes' water rights could have profoundly affected the water rights of their neighbors, who also need water from these streams to irrigate their farms and run their businesses. And the exercise of those water rights certainly would have spawned years of litigation, and all the controversy that always accompanies disputes over water in the West.

But the tribes, the state of Colorado, and the tribes nonIndian neighbors chose a different route. They sat down at the negotiating table to find a way to satisfy the tribes water rights without harming the water rights of others in southwestern Colorado. The solution that they developed is innovative and fair. It offers the tribes water from an existing federal reclamation project -- the Dolores Project -- as well as from a project that was authorized decades ago but never constructed -- the Animas-La Plata Project.

I think this settlement agreement is a good one, and I believe it is very important that the Congress endorse that agreement. At the same time, I recognize that this settlement agreement has not eliminated the controversy that surrounds this issue. The length of today's witness list testifies to that.

But this settlement agreement -- and this legislation -- does provide a way to fulfill the nation's commitment to the tribes without harming the rights of others in Colorado or in downstream states. I believe that is the standard against which this legislation must be measured -- and against which the suggestions and ideas of today's witnesses must be measured.

I am looking forward to today's hearings, I welcome all of the witnesses to this joint hearing of the Select Committee on Indian Affairs and the Subcommittee on Water and Power, and I look forward to working with all of you in the months to come.

Statement of

Senator William L. Armstrong

to

United States Senate

Committee on Energy and Natural Resources
and
The Select Committee on Indian Affairs

9:00 A.M., December 3, 1987

S. 1415

Colorado Ute Indian Water Rights Settlement Act of 1987

I thank the Chairman of the Senate Committee on Energy and Natural Resources (Subcommittee on Water and Power) and Select Committee on Indian Affairs and members of both committees for their support and understanding of the unique problems facing the States of Colorado and New Mexico with regard to the settlement of Indian Winters reserved water rights in southwest Colorado and the authorized construction of the Animas-La Plata Participating Project of the Colorado River Storage Project which makes the settlement possible.

The Settlement Agreement which this legislation implements will terminate years of complex and costly litigation by the Ute Mountain and Southern Ute Indian tribes to resolve their claims to water in Southwest Colorado. The Agreement not only settles the Colorado Ute Indian water rights question, but saves millions of dollars and many years of effort that would have been spent by the Indians, non-Indians, Federal government, State of Colorado, several water conservancy districts, cities and towns on litigation. In addition, damage claims resulting from the litigation could cost the United States hundreds of millions of dollars.

Not only will the water rights settlement fulfill a century-old obligation to Colorado Ute tribes, it will remove a serious cloud from the adjudicated water rights of seven rivers and six of their tributaries in southwest Colorado as well as from the water supply of Mesa Verde National Park.

The Colorado Ute Indian Water Rights Settlement Agreement is a remarkable document. The Agreement represents more than two years of negotiation by as diverse a group as you can imagine. Involved in the monumental challenge of resolving the Indian reserved water rights question while recognizing existing uses of southwest Colorado water were representatives of several agencies of the federal government, the states of Colorado and New Mexico, the two Indian Tribes, and numerous water conservancy districts, cities and other entities representing the non-Indian water users of southwest Colorado and northwest New Mexico. At the beginning of the negotiations, no one seriously believed that such a final settlement agreement could be attained. But, it has been accomplished. Now it is necessary for the United States Congress to implement the Agreement.

In addition to those parties, key leaders in the Administration, led by Wayne Marchant, Principal Deputy Assistant Secretary for Water and Science, have labored long and hard to perfect this legislation.

The Administration has approved the basic components of S. 1415, two different times: once as a signatory to the detailed Animas-La Plata Project Cost-Sharing Agreement of June 30, 1986, and again as a signatory to the Colorado Ute Indian Water Rights Final Settlement Agreement of December 10, 1986.

The implementing vehicle for the Indian Water Rights Settlement Agreement is the Animas-La Plata reclamation project to be located near Durango, Colorado. The construction of the Animas-La Plata project does more than enable the resolution of the Indian water rights question. Its construction is another step the federal government has a moral and legal obligation to take to meet its commitment to the states of Colorado and New Mexico under the Colorado River Storage Project Act of 1956, as amended by the Colorado River Basin Project Act of 1968.

Contributions by nonfederal parties to construction costs of the Animas-La Plata Project will approach 38% of project costs. Nonfederal parties will contribute $73.2 million through cash contributions, ad valorem taxes or revenue bonds, of which $5 million from Colorado will be for the Tribal Development Funds to aid the two tribes in developing their natural resources. The State of Colorado also is currently spending $6 million to construct a domestic pipeline and distribution system to the Town of Towaoc on the Ute Mountain Ute Indian Reservation. Once this pipeline is built, the people of Towaoc will no longer have to daily haul their domestic water to the reservation by trucks. Nonfederal parties will further assume a $133 million obligation towards construction of proposed Animas-La Plata project facilities.

An identical companion bill, H.R. 2642, was introduced in the House of Representatives with Colorado and New Mexico members and more than twenty others as cosponsors, which indicates the kind of accord that has been reached on this bill. Seldom has any piece of legislation received such word by word scrutiny. Every phrase and sentence has been carefully negotiated.

Mr. Chairman, as you and your committee will be able to ascertain from the testimony in support of S. 1415, the negotiators of the Colorado Ute Indians Water Rights Final Settlement Agreement have brought to the Congress the solution to a perplexing, complex and long-standing problem instead of bringing the problem to your committee for resolution. The solution, as it should, fits the unique physical, legal, social, economic and environmental characteristics of the two Tribes as well as southwest Colorado and northwest New Mexico. The solution is equitable. It is also workable and provides for a viable future for both the Indians and non-Indians. It could only be attained by complex negotiations and many compromises by some of the best engineering and legal talent in the country representing the States of Colorado and New Mexico, the Federal government, the two Indian tribes and the local non-Indian water users. This talent demonstrated by all parties was taxed to its limit before the cost-sharing agreement for the Animas-La Plata Project and the final Indian water rights settlement agreement could be formulated.

When S. 1415, "a bill to implement the settlement of Colorado Ute Indian water rights in southwest Colorado," was introduced, the two Tribes and the State of Colorado were not in complete agreement with the Administration, represented by the Department of Interior and Justice, on the wording of the bill. I am pleased to report that in recent weeks under outstanding leadership of Deputy Assistant Secretary, Wayne Marchant, agreement has been reached by these parties in the form of amendments to S. 1415. The agreed amendments will be proposed by Mr. Marchant in his testimony on behalf of the Administration.

The proposed amendments do not alter either the purpose or intent of the related provisions of the bill, as introduced. They only represent drafting changes that more closely adhere to the December 10, 1986 Colorado Ute Indian Water Rights Final Settlement Agreement. They have been designed to clarify the original intent of that Agreement and S. 1415. I fully support these amendments.

In some respects, the Animas-La Plata and Dolores Projects can be compared to the engine that propels an automobile, these two projects drive the final settlement of the Ute Indians reserved water rights claims by providing water to the tribes without adversely affecting the non-Indian water users on farms or in cities and towns in southwest

Colorado by depriving them of rights to use water on which they are dependent.

It is noteworthy that the Animas-La Plata Project cost-sharing agreement is explicit in saying that: "The Animas-La Plata cost-sharing agreement is an integral part of, and is contingent upon, a final settlement of the litigation filed in Colorado District Court for Water Division No. 7 for the quantification of the reserved water right claims of the Southern Ute and Ute Mountain Ute Indian Tribes in the State of Colorado." The Colorado Ute Indian Water Rights Final Settlement Agreement executed by all parties, including the Federal government, on December 10, 1986 provides for final settlement of the litigation now pending in the court. According to the terms of the Final Settlement Agreement it cannot be implemented until and unless S. 1415 is enacted into law.

Mr. Chairman, I urge you and your committee to carefully consider S. 1415, its purpose and its implications, as a Bill to facilitate and implement that solution to an exceedingly complex and important problem in a unique area of the United State of America and to do everything within your power to enact S. 1415 into law as soon as possible. I am exceedingly pleased to join my colleagues, Senator Wirth and Senators Domenici and Bingaman as sponsors of this bill. Thank you for the priviledge and opportunity to present this statement in support of S. 1415.

STATEMENT OF

U.S. REP. BEN NIGHTHORSE CAMPBELL

before the

UNITED STATES SENATE
SELECT COMMITTEE ON INDIAN AFFAIRS
and
THE WATER AND POWER SUBCOMMITTEE
OF THE COMMITTEE ON ENERGY AND COMMERCE

on

S.1415

DECEMBER 3, 1987

THANK YOU MR. CHAIRMAN.

IT IS AN HONOR TO APPEAR BEFORE THESE TWO COMMITTEES ON THIS MATTER OF GREAT INTEREST TO ME. I APPRECIATE THE INVITATION TO SPEAK IN MY CAPACITY AS PRIME SPONSOR OF THE HOUSE VERSION OF SENATE BILL 1415. THERE ARE MANY OTHERS HERE TO TESTIFY AS TO THE PARTICULARS OF THIS BILL. I WANT TO TAKE A FEW MOMENTS TO SPEAK FROM THE HEART.

I THANK YOU, MR. CHAIRMAN, FOR BRINGING UP THIS MATTER OF GREAT IMPORTANCE TO THE INDIAN COMMUNITY AND THE STATES OF COLORADO AND NEW MEXICO FOR A HEARING. IT IS APPRECIATED. I ALSO THANK THE SENATORS FROM COLORADO AND NEW MEXICO FOR THEIR TIRELESS EFFORTS IN CHAMPIONING THIS LEGISLATION.

SENATE BILL 1415 AND ITS HOUSE COUNTERPART H.R. 2642 REPRESENT THE CULMINATION OF YEARS OF EFFORT AND HISTORIC COOPERATION BETWEEN INDIAN AND NON-INDIAN WATER INTERESTS OF COLORADO, NEW MEXICO, AND THE FEDERAL GOVERNMENT. EXTRAORDINARY EFFORTS WERE EXERTED BY THOSE CONCERNED TO AMICABLY RESOLVE, IN THE SPIRIT OF COOPERATION AND RESPECT, LONGSTANDING NATIVE AMERICAN WATER RIGHTS, WHICH OVER THE YEARS HAD BEEN NEGLECTED OR IGNORED. THOSE REMARKABLE EFFORTS RESULTED IN A SETTLEMENT AGREEMENT SIGNED IN DECEMBER, 1986 BY THE FEDERAL DEPARTMENTS OF THE INTERIOR AND JUSTICE, THE STATE OF COLORADO, AND VARIOUS LOCAL GOVERNMENTS AND WATER DISTRICTS, AS WELL AS THE SOUTHERN UTE AND UTE MOUNTAIN UTE INDIAN TRIBES.

THIS LEGISLATION REPRESENTS, CODIFIES, AND IMPLEMENTS THAT DELICATELY BALANCED AGREEMENT, AND THE MANDATED COMMITMENT TO THESE INDIAN TRIBES. FOR EVERYONE'S SAKE, WE SHOULD NOT RENEGE ON THAT COMMITMENT, AS HAS SO OFTEN HAPPENED IN AMERICAN HISTORY. I ASK THAT YOU REMEMBER THE SIGNIFCANCE OF AND THE EFFORT PUT INTO THIS AGREEMENT IN CONSIDERING THIS LEGISLATION. TOO MUCH HAS BEEN DONE BY INDIANS AND NON-INDIANS TO COME TOGETHER IN COOPERATION AND RESPECT. THIS LEGISLATION MUST BE PASSED TO ENSURE THE CONTINUATION OF THAT COOPERATION AND RESPECT.

WATER IS TO NATIVE AMERICANS, JUST AS IT IS TO NON-INDIANS IN THE WEST, PRECIOUS. IT IS A KEY COMPONENT TO THOSE WESTERN TRIBES SEEKING TO ESCAPE THE POVERTY AND DEPENDENCY BROUGHT ABOUT BY SCARCE RESOURCES THAT NATURE AND, SADLY, OUR GOVERNMENT, HAS HISTORICALLY INFLICTED ON THE INDIAN. WE WELL KNOW THE BENEFITS OF WATER THAT HAVE BEEN MADE AVAILABLE TO, OR HARNESSED BY, THE SOUTH, THE NORTHWEST, CALIFORNIA, THE NORTHEAST AND THE CENTRAL UNITED STATES. THE SOUTHWEST IS ENTITLED TO THOSE BENEFITS AS WELL. INDIAN SELF-DEVELOPMENT IN THE SOUTHWEST REQUIRES THE SCARCE AND PRECIOUS RESOURCE OF WATER, TO WHICH THE INDIANS ARE ENTITLED.

I KNOW FIRSTHAND OF THE NEEDS OF THESE TWO TRIBES FOR WATER. I'VE REPRESENTED THAT AREA OF COLORADO IN THE STATE LEGISLATURE FOR FOUR YEARS, AND NOW REPRESENT IT IN CONGRESS. MY HOME IS ON THE SOUTHERN UTE INDIAN RESERVATION. I CAN COMFORTABLY SPEAK WITH AUTHORITY THAT THIS LEGISLATION IS NEEDED.

SENATE BILL 1415, AND THE SETTLEMENT BEHIND IT, REPRESENT A COMPROMISE BETWEEN INDIANS AND NON-INDIANS. PAPER WATER RIGHTS, HOWEVER NICE THEY LOOK TO LAWYERS, AND HOWEVER MUCH ARGUED, DO THE UTE MOUNTAIN UTES AND SOUTHERN UTES NO GOOD. WET WATER, AND THE ABILITY TO USE IT, IS NECESSARY. THIS LEGISLATION SEEKS TO EVENTUALLY PROVIDE THOSE NEEDS TO THE TRIBES. CONTINUED LITIGATION BY THE TRIBES, IMPACTING UPON THE WHOLE AREA, IS NEITHER CONDUCIVE TO FRIENDLY RELATIONS, NOR TO COLORADO AND NEW MEXICO WATER INTERESTS. THIS LEGISLATION WOULD AVOID SUCH FRICTION.

THERE ARE THOSE WHO FEEL THREATENED BY THIS LEGISLATION, FEARING THE CONSEQUENCES OF A JUST AND AMICABLE SETTLEMENT OF LONGSTANDING AND SUBSTANTIAL INDIAN WATER CLAIMS. FULFILLMENT OF THIS LEGISLATION CERTAINLY DOES NOT DEPRIVE NON-INDIAN WATER USERS FROM ENJOYING THOSE WATER RIGHTS ACCORDED TO THEM BY LAW. NON-INDIAN WATER USERS IN COLORADO, THOSE WHO HAVE THE MOST TO LOSE SHOULD THIS LEGISLATION FAIL, AND WHO ARE MOST IMPACTED BY INDIAN WATER CLAIMS, ARE WILLING TO SETTLE THEIR DIFFERENCES. THERE IS NO REASON WHY OTHERS CANNOT ALSO DO SO.

I AM PLEASED THAT SINCE THE HOUSE HELD ITS HEARING ON THIS LEGISLATION IN SEPTEMBER, PARTIES TO THE SETTLEMENT AGREEMENT HAVE MADE GREAT PROGRESS WITH THE DEPARTMENT OF THE INTERIOR IN SATISFYING CONCERNS THE DEPARTMENT HAS HAD WITH RESPECT TO THE LEGISLATION IMPLEMENTING THE AGREEMENT SIGNED BY THAT DEPARTMENT. THAT IS GOOD NEWS. CHANGES IN THE LEGISLATION CLARIFY THE ORGINAL INTENT OF THE BILL AS INTRODUCED. EFFORTS ARE BEING MADE

TO WORK WITH LOWER BASIN STATES TO RELIEVE THEIR FEARS AND CONCERNS ABOUT THIS LEGISLATION. THAT IS GOOD NEWS. ALONG WITH ALL OF THE BILL'S SUPPORTERS, I AM WILLING TO WORK TO SATISFY ALL REASONABLE CONCERNS OF THOSE STATES IN GETTING THIS LEGISLATION PASSED. WE ARE WILLING TO WORK WITH CONCERNED INTERESTS, BUT WE WILL NOT ABANDON THE COMMITMENT TO FAIRNESS AND JUSTICE THAT WE, AND THE CONGRESS, OWE TO THE INDIAN AND NON-INDIAN PEOPLES OF COLORADO AND NEW MEXICO.

I STATED THAT THIS LEGISLATION WOULD SATISFY THIS GOVERNMENT'S COMMITMENTS AND OBLIGATIONS TO THE UTE MOUNTAIN UTES AND SOUTHERN UTES, COMMITMENTS AND OBLIGATIONS NO ONE CAN DENY EXIST. I WANT TO POINT OUT THAT THIS LEGISLATION ALSO, AND AT THE SAME TIME, WOULD SATISY IN PART THIS GOVERNMENT'S LONGSTANDING COMMITMENT AND OBLIGATION TO ALL THE PEOPLES OF SOUTHWESTERN COLORADO AND NORTHWESTERN NEW MEXICO. PART OF THE DELICATE AGREEMENT BETWEEN THE INDIANS AND NON-INDIANS INVOLVES SATSIFACTION OF INDIAN WATER RIGHTS CLAIMS FROM THE LONG AWAITED ANIMAS-LA PLATA WATER PROJECT, WHICH WAS AUTHORIZED BY LAW NEARLY 20 YEARS AGO. THE COMMITMENTS MADE BY CONGRESS WERE TO ENSURE THAT ALL THE WESTERN STATES' WATER INTERESTS AND NEEDS BE DEALT WITH FAIRLY. THAT COMMITMENT REMAINS UNFULFILLED TO DATE. THIS CANNOT, AND SHOULD NOT, BE FORGOTTEN. COLORADO AND NEW MEXICO SAY IT SHOULD NOT BE FORGOTTEN, AND EQUITY REQUIRES FULFILLMENT OF THE GOVERNMENT'S COMMITMENT. I ASK THAT YOU REMEMBER THAT PROMISE, THAT COMMITMENT, MADE BY CONGRESS TO COLORADO AND NEW MEXICO IN YOUR DELIBERATIONS OVER THIS LEGISLATION.

STATEMENT OF SENATOR PETE V. DOMENICI
ON S. 1415,
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT

December 3, 1987

Mr. Chairmen,

Thank you for permitting me to testify before you today.

Although the provisions of the Colorado Ute Indian Water Rights Settlement Act do not directly affect the State of New Mexico, the passage of this legislation is vital to the Animas-La Plata Project, which will supply much-needed water to northwestern New Mexico. As a cosponsor of S. 1415, I cpme before you today to encourage you to approve this measure.

The Animas-La Plata Project is needed to provided water to northwestern New Mexico and southwestern Colorado. The beneficiaries of the project are diverse. They include residents of two states, three Indian tribes, municipalities, farmers and ranchers, business owners, and sportsmen.

The Animas-La Plata Project will supply an average of 54,000 acre-feet of water to New Mexico per year. The remaining 144,000 acre-feet will go to Colorado.

The Project is will allow New Mexico to put to use the water of the Upper Colorado River Basin to which it is entitled. It will ensure that water is available in the future to support the population, industry, and agricultural enterprises of communities in northwestern New Mexico, such as Farmington, Aztec, and Bloomfield, as well as the Navajo Reservation.

The Animas-La Plata Project has been on the drawing boards for over 30 years. In 1968, when Congress authorized the Central Arizona Project, it committed the Federal Government to the construction of the Animas-La Plata Project. However, in spite of that express commitment, construction has yet to begin on the Project.

Most recently, the Project had to overcome the twin hurdles presented by Public Law 99-88, which mandates non-Federal cost-sharing for Federal reclamation projects, and various water claims and other legal claims made by the Ute Mountain Ute and Southern Ute Indian Tribes against the Federal Government.

Many thought it would be impossible to come up with either a cost-sharing agreement or a settlement of the Indian claims, but last year both goals were achieved.

The projected cost of the Project, including the settlement of the Indian water rights claims, is $573 million. As a result of the cost-sharing agreement entered into by the parties that will benefit from the construction of the Project, the non-Federal parties to the agreement will contribute $212 million towards that cost.

This represents 37 percent of the total costs of the Animas-La Plata Project.

I have long supported cost-sharing, not only to reduce Federal expenditures, but also as a means of evaluating the true need of a project. I would like to point out that very few Federal projects have as a high a level of non-Federal participation as does the Animas-La Plata Project. For example, non-federal entities have borne only 9.5 percent of the cost of the Central Arizona Project, although it was authorized at the same time as Animas-La Plata.

The cost-sharing agreement was the product of much negotiation. Considering the number of parties and the long-standing problems between them, it is amazing that an agreement could be reached.

The 1986 Colorado Ute Indian Water Rights Final Settlement Agreement represents an historic settlement of Indian water rights claims. It settles other claims that the tribes have against the Federal Government. This agreement is predicated on the construction of the Animas-La Plata Project, which is far less costly than the potential liability of the Federal Government for the claims of the Colorado Ute Indian Tribes.

S. 1415 and H.R. 2642, its House companion, are needed to implement the Animas-La Plata cost-sharing agreement and the Colorado Ute Indian water rights agreement. These bills provide statutory authority for a number of provisions in those two agreements, including provisions on the use of water from the Animas-La Plata Project by the Colorado Ute Indian Tribes and the establishment of tribal development funds. The bill before you has been carefully crafted by many parties.

Mr. Chairmen, the Colorado Ute Indian Water Rights Settlement Act is supported by all the members of both the Colorado and the New Mexico Congressional delegations, as well as the States of New Mexico and Colorado. This legislation is needed in order for the Animas-La Plata Project to move forward.

There is no question that Colorado and New Mexico have given their support over the years to Lower Colorado River Basin projects, ones that have enabled the Lower Basin States to conserve water, furnish water to arid lands, and preserve the Colorado River. It is now time for the Upper Basin States of New Mexico and Colorado to be given the right to develop the water rights to which they are entitled.

I hope that the Committee will act favorably on this legislation in the near future so that construction on the Animas-La Plata Project, which has been delayed so long, can finally begin.

STATEMENT OF THE HONORABLE DUANE WOODARD
ATTORNEY GENERAL OF THE STATE OF COLORADO

before the

SELECT COMMITTEE ON INDIAN AFFAIRS

and the

WATER AND POWER SUBCOMMITTEE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

concerning

S. 1415
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987

Washington, D.C.
December 3, 1987

Introduction

The United States filed suit in 1930 in federal district court to quantify the rights of the Southern Ute Indian Tribe to the Pine River and a decree was subsequently entered. However, no other claims were filed until 1972.

At that time, the United States Department of Justice, as trustee for the Tribes, filed claims in federal district court for both Tribes on nearly all of the streams in the San Juan River Basin in southwestern Colorado. Defendants and intervenors moved to dismiss this filing on the grounds that under the McCarran Amendment, 43 U.S.C. §666, the State district court had jurisdiction. On appeal to the U.S. Supreme Court, the court ruled that the state did have jurisdiction and that the policy of the McCarran Amendment would be furthered if the quantification of tribal claims to water occurred in the State court (see, Colorado River Water Conservation District v United States (a/k/a Akin v United States), 424 U.S. 800 (1976)).

The Department of Justice then filed water rights applications in the Colorado District Court for Water Division No. 7 in 1976. It is this litigation which the Colorado Ute Indian Water Rights Final Settlement Agreement ("Agreement") of December 10, 1986, will bring to a negotiated conclusion. Implementation of the Agreement requires, however, the enactment of legislation by Congress. This is why S. 1415 and an identical bill in the House of Representatives, H.R. 2642, have been introduced.

While federal legislation is required to implement certain provisions of the Agreement and of the Binding Cost Sharing Agreement for the Animas-La Plata Project of June 30, 1986, S. 1415 is not a legislative settlement of the Tribes' reserved water rights claims. Unlike other Indian water rights settlement legislation which has been enacted by Congress, S. 1415 does not provide for a legislative quantification of the Tribes' reserved water rights or a legislative definition of the parameters of the Tribes' reserved water rights.

Rather, it is the Colorado District Court for Water Division No. 7 which has jurisdiction, pursuant to the McCarran Amendment, to decree and vest in the Tribes the Indian reserved water rights to which the parties have agreed. Thus, the bill before you is a much narrower expression of Congressional involvement than has been the case in the previous settlements, which were entirely creatures of an act of Congress.

Summary of S. 1415

A summary of the bill as introduced is attached. The main purposes of the bill are as follows:

(1) The Tribes are to receive water rights to water supplied from the Animas-La Plata and Dolores Projects. To effect this part of the Agreement, the bill:

(a) Authorizes the Secretary of the Interior ("Secretary") to use the project to provide water to the Tribes,

(b) Provides for certain deferrals of costs that would otherwise be borne by the Tribes pending their use of project water, and

(c) Provides that federal reclamation laws shall not apply to the project reserved waters supplied to the Tribes except to the extent that those laws may also apply to the Tribes' other reserved waters. The purpose of this provision is to insure that project reserved waters are not treated differently, except as provided for in the Agreement, than the other reserved waters of the Tribes simply because a reclamation project is the source of the water.

(2) Section 5(a) authorizes each Tribe, subject to the Secretary's approval, to enter into water use contracts to sell, exchange, lease, or otherwise temporarily dispose of water in accordance with Article V of the Agreement. Section 5(b) sets forth

the procedures and criteria by which the Secretary shall review and approve or disapprove of any water use contract submitted by a Tribe.

(3.) Section 7 establishes the tribal development funds for which the Agreement calls and authorizes the appropriation of a total of $49.5 million, payable in three annual installments.

(4) Section 8 authorizes the Tribes to waive and release claims concerning or related to the water rights described in the Agreement and conditions the performance of the Secretary's obligations under the Act upon the Tribes' execution of such waivers and releases.

(5) Section 9 authorizes the Secretary to comply with the administrative procedures set forth in Article IV of the Agreement. The Department of the Interior requested that this section be included to insure that it would have authority to administer the tribal water rights in compliance with the Agreement.

(6) The Agreement provides that the construction of the Animas-La Plata and Dolores projects by the Bureau of Reclamation shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act. Section 10 of the bill implements this provision.

Proposed Changes to S. 1415

At the time S. 1415 was introduced, the Tribes and the state had not yet had the opportunity to fully work out with the Departments of the Interior and of Justice the wording of the bill. I am pleased to report that we have now been able to do that.

Attached to this statement are the agreed upon changes to the bill. We respectively request that these changes be made when the bill is marked-up.

In Colorado's view, the proposed changes to sections 4(a), 4(b), 5(a), 5(c), and 9 in no way alter the purpose or intent of these provisions in the bill as introduced. Rather, they are merely drafting changes designed to clarify the original intent of the bill as introduced.

Proposed Changes to Subsection 4(a)

Subsection 4(a) would be changed to make it consistent with the other sections of the bill. In S. 1415 as introduced, the term "project reserved waters" was used as the title of section 4 and in the text of the section. However, that term is not defined or used elsewhere in the bill. To avoid confusion, the proposed amendment deletes this term, but continues to require that the reserved water supplied to the Tribes from the Dolores and Animas-La Plata Projects be used "in accordance with the Agreement." Since the term "project reserved waters" is defined and used in the Agreement, this makes it clear that what the Secretary is authorized to do is to use the projects to supply "project reserved water" as that term is defined in the Agreement, subject to the terms and conditions of the Agreement that apply to such "project reserved water."

Proposed Changes to Subsection 4(b)

The proposed changes to subsection 4(b) are merely for clarification. The revised subsection means the same thing as subsection 4(b) in the bill as introduced.

A waiver of federal reclamation laws is required by article VI, section A, subsection 1.c, of the Agreement. The waiver in subsection 4(b) as introduced, and as it is proposed to be reworded, is intended to meet the requirements of article VI, while at the same time resolving an ambiguity between article VI, section A, subsection 1.c and article V, section B, subsection b of the Agreement. This ambiguity arises because some federal reclamation laws are arguably federal laws that pertain "to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation or quality of those waters." It is the intent of the Agreement that the federal laws encompassed by the quoted language, which is from article V, section B, subsection b, not be waived.

The purpose of this subsection is to insure that project reserved waters are not treated any differently, except as provided for in the Agreement, than any of the Tribes' non-project reserved waters (which are direct flow water rights whose source does not involve any federal reclamation projects) simply because a reclamation project is the source of the project reserved water. This subsection would waive those provisions of federal reclamation law which impose, for example, project boundary, acreage, and land classification limitations, or which limit leasing of water supplied from the Animas-La Plata and Dolores Projects. This waiver of reclamation law is intended only to result in water supplied from the two projects having the same legal status as the Tribes' non-project (i.e., direct flow) reserved water rights. Consequently, those reclamation laws, if any, which apply to the Tribes' non-project reserved water rights are not waived by this subsection and continue to apply, if at all, both to the Tribes' project and non-project reserved water rights.

Subsection 4(b) implements, among other things, those provisions of the Agreement which address off-reservation use of tribal waters. With respect to in-state leasing of tribal waters, subsection 4(b) implements the requirement of article V section B, subsection a, of the Agreement that tribal leasing will be free of any applicable reclamation law restriction which may be imposed on the Tribes' project reserved waters supplied from the two federal reclamation projects. Then, with respect to out-of-state leasing, subsection 4(b) affirms that any restrictions imposed on out-of-state uses by article V, section B, subsection b, of the Agreement shall include only those reclamation law restrictions, if any, which apply to the Tribes' non-project reserved waters.

Subsection 4(b) does not relieve the Tribes of their financial obligations on the Dolores and Animas-La Plata Projects, which obligations remain in effect under reclamation law as modified by section 6 of the bill. In addition, reclamation laws which are required to protect other project users pursuant to article III, section A, subsections 1 and 2, and article III, section B, subsection 1, of the Agreement are not waived.

Proposed Changes to Subsections 5(a) and (c)

To understand section 5, one must look to the issue of off-reservation use of water by the Tribes. In order to be able to use water off-reservation, the Tribes must overcome three potential barriers:

(1) The Non-Intercourse Act, 25 U.S.C. §177,

(2) The Winters Doctrine and the inherent characteristics of an Indian reserved water right, and

(3) All applicable state and federal laws (which includes, without limitation, statutes, regulations and rules, and judicial decisions), interstate compacts, and international treaties.

To remove the first of these barriers is a condition necessary, but not sufficient, to the Tribes being able to use water off-reservation. For that matter, the barrier of the Non-Intercourse Act has to be removed in order for a Tribe to temporarily dispose of its water on-reservation should it want, for example, to lease water to a mining or industrial venture which operates within the boundaries of the reservation.

Section 5(a), both in the bill as introduced and as it is proposed to be changed, removes the first of these barriers, but it does nothing to remove the second and third of the potential barriers to the off-reservation use of water.

Furthermore, section 5(c) in the bill as introduced, or as folded into section 5(a) as it is proposed to be amended, insures that the mere removal of the barrier presented by the Non-Intercourse Act does not remove, or in any way affect, any of the other obstacles which may exist to the off-reservation use of water. Put another way, section 5(a) does not, in and of itself, authorize or enable the off-reservation use of water.

The Agreement clearly does permit the Tribes, as have Congressionally legislated settlements, to use water off-reservation within the State of Colorado under the terms and conditions set forth in the Agreement. These terms and conditions require the Tribes to comply with all laws with which non-federal, non-Indian entities must comply. However, in stating that the Tribes may use water off-reservation "... outside the State to the extent permitted by any: (l) State law, (ii) Federal law, (iii) interstate compact; or (iv) international treaty," the Agreement confers no authority on the Tribes to use water outside of the State of Colorado (the terms "State law" and "Federal law" include, without limitation, statutes, rules and regulations, and judicial decisions, including the Winters Doctrine). In fact, the issue remains to be settled by future litigation and is not addressed, with the exception of removing the barrier of the Non-Intercourse Act, by either the legislation or the Agreement.

I would submit to you that the out-of-state provision of the Agreement (Article V. B. b) and sections 5(a) and (c) of the bill as introduced, or the new proposed section 5(a), lead to no different result than the silence which is found in Indian settlement legislation previously passed by Congress concerning the off-reservation, out-of-state use of water. One can construe from the silence of those acts no more or no less than what section 5 results in. Furthermore, one cannot look to the Agreement as having established the legal right of the Tribes to use water off-reservation, outside of the State of Colorado, as I noted above.

Proposed Changes to Section 9

The proposed re-wording of section 9 merely tracks the wording called for by the Agreement (Article VI.A.1.g. at p.66).

Summary

In conclusion, we urge your favorable action on this bill, subject to the proposed amendments attached hereto.

gl

SUMMARY OF H.R. 2642 AND S. 1415 (as introduced)

COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987

On December 10, 1986, the United States, Southern Ute Indian Tribe, Ute Mountain Ute Indian Tribe, State of Colorado, and numerous local water users in southwestern Colorado entered into the Colorado Ute Indian Water Rights Final Settlement Agreement (the Agreement). The purpose of the Agreement is to settle all claims by the Tribes and by the United States on behalf of the Tribes in the water adjudication proceedings pending in the Colorado District Court for Water Division No. 7, which litigation was filed in 1976.

The Agreement was preceded by another document--the June 30, 1986, Binding Agreement for Animas-La Plata Project Cost Sharing. This agreement provides for non-federal financing of part of the construction cost of the Animas-La Plata Project, the project being an integral component of the settlement.

In order to implement certain provisions of these two agreements, federal legislation will be required. It is for this reason that the subject bills have been introduced.

SECTION 1. SHORT TITLE

Colorado Ute Indian Water Rights Settlement Act of 1987.

SECTION 2. FINDINGS

This section sets forth the congressional findings upon which the legislation is premised.

SECTION 3. DEFINITIONS

This section defines certain terms used in the act.

SECTION 4. PROJECT RESERVED WATERS

Subsection (a) authorizes the Secretary of the Interior (the Secretary) to use water from the Animas-La Plata and Dolores Projects to supply the project reserved water rights of the two Tribes in accordance with the Agreement. Subsection (b) provides that federal reclamation laws shall not apply to the project reserved water supplied to the Tribes from the projects except to the extent that those laws may also apply to the Tribes' other reserved waters.

SECTION 5. TRIBAL WATER USE CONTRACTS

Subsection (a) authorizes each Tribe, subject to the Secretary's approval, to enter into water use contracts to sell, exchange, lease, or otherwise temporarily dispose of water in accordance with Article V of the Agreement. The Tribes are not, however, authorized to permanently alienate any water right. Subsection (c) states that the authorization provided for in subsection (a) shall not amend, construe, supersede, or preempt any state law, federal law, interstate compact, or international treaty that pertains to the Colorado River or its tributaries.

Subsection (b) sets forth the procedures and criteria by which the Secretary shall review and approve or disapprove of any water use contract submitted by a Tribe.

Subsection (d) provides that the proceeds from a water use contract may not be used for per capita payments to members of either Tribe.

SECTION 6. REPAYMENT OF PROJECT COSTS

Subsection (a) provides that the Secretary shall defer, without interest, the repayment of the construction costs which are allocable to each Tribe's municipal and industrial water allocation from the Animas-La Plata and Dolores Projects until water is first used. O & M costs are likewise deferred. When an increment of its allocation is first used by a Tribe, repayment of that increment's pro rata share of construction costs commences and the Tribe begins to bear the pro rata share of O & M costs.

Subsection (b) makes the same provisions for each Tribe's agricultural irrigation water allocation from the two projects, except that O & M costs are deferred only for the Animas-La Plata Project.

Subsections (c) and (d) provide for further deferrals of the financial obligations of the Tribes with respect to the Animas-La Plata and Dolores Projects under certain circumstances.

Subsection (e) defines when water shall be deemed to be used by the Tribes for the purpose of determining when their financial obligations pursuant to subsections (a) through (d) are triggered.

Subsection (f) authorizes the appropriation of such funds to the Secretary as are needed to pay for the O & M costs which the Secretary is to bear pending the use of water by the Tribes.

Subsection (g) implements a provision of the June 30, 1986, Animas-La Plata Project cost sharing agreement. It provides that the costs of the Animas-La Plata Project which are in excess of the irrigators' ability to repay and which are therefore to be repaid from the Upper Colorado River Basin Fund shall be so repaid in 30 equal annual installments from the date that water is first available for use.

SECTION 7. TRIBAL DEVELOPMENT FUNDS

Subsection (a) establishes a tribal development fund for each Tribe and authorizes the appropriation of a total of $49.5

million payable in three annual installments to the two funds. Subsection (b) provides for the additional payment of interest if the three annual installments authorized by subsection (a) are not made as called for by that subsection.

Subsection (c) sets forth how monies in the two funds shall be invested by the Secretary and the process by which each Tribe may submit its own tribal investment plan. Further provision is made for the submittal by the Tribes to the Secretary of economic development plans for the expenditure of the monies in a fund.

Subsection (d) provides that no part of the principal of the tribal development funds, or of the income accruing from such funds, shall be distributed to a member of either tribe on a per capita basis.

SECTION 8. WAIVER OF CLAIMS

This section authorizes the Tribes to waive and release claims concerning or related to the water rights described in the Agreement and conditions the performance of the Secretary's obligations under the act upon the Tribes' execution of such waivers and releases.

SECTION 9. ADMINISTRATION

This section authorizes the Secretary to comply with the administrative procedures set forth in Article IV of the Agreement when exercising his authority to administer water rights on the Tribes' reservations.

SECTION 10. INDIAN SELF-DETERMINATION ACT

This section provides that design and construction of the Animas-La Plata and Dolores Projects by the Bureau of Reclamation shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act. Any preference provided the Tribes by virtue of this section shall not detrimentally affect the construction schedules of the projects.

SECTION 11. RULES OF CONSTRUCTION

This section provides how the act shall be construed.

SECTION 12. EFFECTIVE DATE

This section provides that sections 4(b), 5, and 6 shall take effect on the date on which the final consent decree is entered by the Colorado District Court. This section further prescribes how monies appropriated to the tribal developmental funds shall be handled pending the entry of the final consent decree or in the event the decree is not entered by December 31, 1991.

/bj 9/8/87

Proposed Changes to S. 1415 and H.R. 2642
The Colorado Ute Indian Water Rights Settlement Act of 1987

October 15, 1987

The Departments of the Interior and of Justice, the State of Colorado, the Ute Mountain Ute Tribe, and the Southern Ute Tribe propose that the following changes be made to S. 1415 and H.R. 2642.

1. Change section 4 of the bills to read as follows:

> SEC. 4. TRIBAL RESERVED WATERS.
>
> (a) WATER FROM ANIMAS-LA PLATA AND DOLORES PROJECTS.--The Secretary is hereby authorized to use the Animas-La Plata and Dolores Projects to supply reserved water to the Tribes in accordance with the Agreement.
>
> (b) APPLICATION OF FEDERAL RECLAMATION LAWS.--The reserved water supplied to the Tribes or their lessees from the Dolores and Animas-La Plata Projects shall be treated in all respects in the same manner, except as provided in the Agreement, as the Tribes' other reserved waters.

2. Change subsection 5(a) of the bills to read as follows:

> (a) GENERAL AUTHORITY.--Subject to the approval of the Secretary and to the provisions of its constitution, each Tribe is authorized, pursuant to 25 USC 177, to enter into water use contracts to sell, exchange, lease, or otherwise temporarily dispose of water in accordance with Article V of the Agreement, but the Tribes shall not permanently alienate any water right. The maximum term of each such water use contract, including all renewals, shall not exceed 50 years in duration. The authorization set forth in this subsection does not address whether the sale, exchange, lease, or other temporary disposition of water by the Tribes is permitted or prohibited by--and therefore shall not be interpreted to amend, construe, supercede or preempt--any state law, Federal law, interstate compact, or international treaty that pertains to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

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3. Delete subsection 5(c), "Scope of Authorization," and redesignate subsection 5(d), "Per Capita Payments," as 5(c) in both bills.

4. Change the title of subsection 6(d) of the bills to read: "Secretarial Deferral."

5. Insert the word "gross" before the word "revenues" in line 18 on page 9 of S. 1415 and in line 21 on page 9 of H.R. 2642.

6. In the last sentence of subsection 7(c)(3), insert the language "the approval of an economic development plan or from" after the words "arising from" in line 12 on page 13 of S. 1415 and in line 16 on page 13 of H.R. 2642.

7. Change section 9 of the bills to read as follows:

   SEC. 9. ADMINISTRATION.

   In exercising his authority to administer water rights on the Ute Mountain Ute and Southern Ute Indian Reservations, the Secretary, on behalf of the United States, shall comply with the administrative procedures governing the water rights confirmed in the Agreement and the Final Consent Decree to the extent provided in Article IV of the Agreement.

8. Delete subsection 11(b), "Individual Members of Tribes," from section 11 and redesignated it as section 12 in both bills.

9. Redesignate section 12, "Effective Date," as section 13 in both bills.

COLORADO UTE INDIAN WATER RIGHTS

FINAL SETTLEMENT AGREEMENT

December 10, 1986

STATE OF COLORADO
UTE MOUNTAIN UTE INDIAN TRIBE
SOUTHERN UTE INDIAN TRIBE
UNITED STATES DEPARTMENT OF THE INTERIOR
UNITED STATES DEPARTMENT OF JUSTICE
ANIMAS-LA PLATA WATER CONSERVANCY DISTRICT
DOLORES WATER CONSERVANCY DISTRICT
FLORIDA WATER CONSERVANCY DISTRICT
MANCOS WATER CONSERVANCY DISTRICT
SOUTHWESTERN WATER CONSERVATION DISTRICT
CITY OF DURANGO
TOWN OF PAGOSA SPRINGS
FLORIDA FARMERS DITCH COMPANY
FLORIDA CANAL COMPANY
FAIRFIELD COMMUNITIES, INC.

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COLORADO UTE INDIAN WATER RIGHTS FINAL SETTLEMENT AGREEMENT

The United States, the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, and the additional governmental and private entities signatory hereto, acting through their respective representatives, hereby agree as follows:

I. GENERAL PURPOSES

The purposes of this Colorado Ute Indian Water Rights Final Settlement Agreement are to: (1) determine finally all rights of the Southern Ute and Ute Mountain Ute Indian Tribes, and of the persons claiming under the Tribes, to beneficially use water for, or to beneficially use water on, under, adjacent to or otherwise appurtenant to, the Southern Ute and Ute Mountain Ute Indian Reservations within the State of Colorado; (2) settle existing disputes and remove causes of future controversy between the Tribes and the State, between the Tribes and the United States, and between Indians of the Reservations or their successors and other persons, concerning the rights to beneficially use water in southwestern Colorado; (3) settle all claims by the Tribes and by the United States on behalf of the Tribes in the water adjudication proceedings pending in the Colorado District Court for Water Division No. 7 pursuant to the Colorado Water Right Determination and Administration Act of 1969, title 37, article 92, C.R.S. (1973 and as amended); (4) to secure for the Tribes an opportunity to derive an economic benefit or generate revenue from the use of the project and non-project reserved water rights secured in this Agreement; (5) to enhance the Tribe's ability to meet their repayment obligations under this Agreement; and (6) to authorize the Tribes to sell, exchange, lease or otherwise temporarily dispose of their water.

II. DEFINITIONS

For purposes of this Agreement:

1. The term "Agreement" shall mean the Colorado Ute Indian Water Rights Final Settlement Agreement.

2. The term "Animas-La Plata Project" means the Animas-La Plata Project, Colorado-New Mexico, a participating project under the Colorado River Storage Project Act, 70 Stat. 105, 43 U.S.C. 620, as amended by the Colorado River Basin Project Act, 82 Stat. 885.

3. The term "Dolores Project" means the Dolores Project, Colorado, a participating project under the Colorado River Storage Project Act, 70 Stat. 105, 43 U.S.C. 620, as amended by the

Colorado River Basin Project Act, 82 Stat. 885.

4. The term "net acres" means the acres, exclusive of lands necessary for roads, buildings, or farm practices, which the Tribes have a right to irrigate pursuant to this Agreement.

5. The term "per annum" means per water year, with a water year commencing on October 1 each year and running through the next succeeding September 30th.

6. The term "Secretary" means the Secretary of the Interior.

7. The term "State Engineer" means the State Engineer of the State of Colorado, as described in title 37, article 80, C.R.S. (1973 & 1986 Supp.), and his agents and employees.

8. The term "State" means the State of Colorado.

9. The term "Tribal lands" means lands owned by the Tribes or Tribal members or lands held in trust or other restricted status by the United States for the benefit of the Tribes or individual Indians.

10. The terms "Tribe" or "Tribes" mean the Ute Mountain Ute Indian Tribe and/or the Southern Ute Indian Tribe, as the context requires, whose Indian reserved water rights are quantified and secured by this Agreement.

11. The term "tributary ground water" means "underground water" as that term is defined and used in section 37-92-103(11), C.R.S. (1973 & 1986 Supp.).

12. The term "project reserved water right" means an Indian reserved water right secured to the Tribes by this Agreement to water supplied either from the Animas-La Plata Project or from the Dolores Project and held in trust by the United States on behalf of the Tribes.

13. The term "non-project reserved water right" means an Indian reserved water right secured to the Tribes by this Agreement other than the rights to water supplied from the Animas-La Plata and Dolores Projects and held in trust by the United States on behalf of the Tribes, and other than water secured to the Southern Ute Indian Tribe from the Florida Project or the Pine River.

14. The term "Tribal permit" means a permit issued by the appropriate Tribal government to authorize the utilization of water allocated to the Tribes under the terms of this Agreement.

15. The term "cfs" means cubic feet per second.

16. The term "combined Highline-Towaoc Canal" means the Highline Ditch as improved and, if necessary, extended, or any other canal or ditch constructed for the purpose of delivering agricultural irrigation and fish and wildlife development water from the Dolores Project to the Ute Mountain Ute Indian Reservation, including the laterals to be constructed by the Bureau of Reclamation pursuant to the DPR.

17. The term "DPR" means the Definite Plan Report dated

September, 1979, for the Animas-La Plata Project or the Definite Plan Report dated April, 1977, and its supplement, dated April 1981, for the Dolores Project, as the context requires.

18. The term "consumptive use" means that quantity of water diverted from the hydrologic stream system and not returned to the hydrologic stream system by either surface flow or percolation.

19. The term "Florida Project" means the Florida Project, Colorado, a participating project under the Colorado River Storage Project Act, 70 Stat. 105, 43 U.S.C. 620, as amended by the Colorado River Basin Project Act, 82 Stat. 885.

20. The term "Vallecito Reservoir" means the Vallecito Reservoir, Colorado, which is located on the Pine River and which is a feature of the Pine River Project, Colorado, which project was constructed under the provisions of section 4 of the Act of June 25, 1910 (36 Stat. 835), and of subsection B, section 4 of the Act of December 5, 1934 (43 Stat. 701).

21. The term "OM&R" means operation, maintenance and replacement.

22. The term "parties" means the signatories to this Agreement.

23. The term "Towaoc Pipeline" means the pipeline to be constructed from the City of Cortez water treatment plant to the Town of Towaoc on the Ute Mountain Ute Indian Reservation, which

pipeline is intended to carry the Ute Mountain Ute Indian Tribes's municipal and industrial water supply from the Dolores Project to the Town of Towaoc.

III. QUANTIFICATION AND DETERMINATION

A. UTE MOUNTAIN UTE INDIAN TRIBE

The Ute Mountain Ute Indian Tribe shall be entitled to the rights described below to beneficially use water from the following sources:

1. Dolores Project

a. The Tribe shall receive a project reserved water right to stored water from the Dolores Project. This project reserved water right shall have an 1868 priority date, shall for all time be subordinated to all water rights decreed and senior to the Dolores Project, and shall share for all time on a pro rata basis the priority of the Dolores Project, which has an adjudication date of March 22, 1963, and an appropriation date of September 10, 1940, C.A. 967, District Court, Montezuma County, Colorado.

b. The project reserved water right shall entitle the Tribe to receive and beneficially use, on that part of the Ute Mountain Ute Indian Reservation within the State or within the boundaries of the Dolores Water Conservancy District, the following allocations of water from the Project, as measured at McPhee Dam and Reservoir:

(i) a maximum of 1,000 acre-feet per annum of municipal and industrial water;

(ii) a maximum of 23,300 acre-feet per annum of agricultural irrigation water; and

(iii) a maximum of 800 acre-feet per annum for fish and wildlife development.

The project reserved water right shall not exceed the total of the above allocations.

c. During periods of water shortage, deliveries of project water, or deliveries of the supply of water available under the project priority, to the Tribe and to all others shall be as follows:

(i) municipal and industrial water allocations as quantified in the DPR shall first be fully satisfied;

(ii) agricultural irrigation water allocations and other allocations as quantified in the DPR, exclusive of stream fishery releases, shall share shortages on a pro rata basis even if changed to other beneficial uses; and

(iii) stream fishery releases to the Dolores River set forth in the DPR shall be made in accordance with the operating agreement between the Dolores Water Conservancy District and the United States Bureau of Reclamation's Contracting Officer as specified by the repayment contract between the District and the United States.

The sharing of shortages in the project's water supply shall govern the actual amount of agricultural irrigation water and water for fish and wildlife development delivered to the Tribe whether or not the average supply of 22,900 acre-feet per annum of agricultural irrigation water and of 800 acre-feet per annum of fish and wildlife development water, as contemplated by the DPR, is actually achieved.

d. In proceedings pursuant to Article IV, Section F, the computations concerning the Tribe's historic beneficial use of water shall be based upon:

(i) actual historic monthly deliveries of the available annual supply, made pursuant to the DPR, measured at the McPhee Dam and Reservoir or, if there has not yet been full use of water, then the Tribe shall be deemed to have historically made beneficial use of any unused portion of each year's available water based upon the following monthly percentage distribution of the available water:

Month	Agricultural Irrigation Water	M&I Water	Fish and Wildlife Development Water
October	4%	6%	12.5%
November	0	5	0
December	0	3	0
January	0	3	0
February	0	3	0
March	0	5	0
April	2	8	37.5
May	15	13	0
June	25	16	12.5
July	28	16	12.5
August	16	13	12.5
September	10	9	12.5
Totals	100%	100%	100.0 %

(ii) actual historic consumptive use or, if there has not yet been full use of water, then the Tribe shall be deemed to have historically consumed 50 percent of the unused portion of the water available to the Tribe from its annual municipal and industrial water allocation, 78.5 percent of the unused portion of the water available to the Tribe from its annual agricultural irrigation water allocation, and 100 percent of the unused portion of the water available to the Tribe from its annual fish and wildlife development allocation; or

(iii) any agreement which may be entered into among the State, the Tribe, the Dolores Water Conservancy District and the United States Bureau of Reclamation which modifies (i) and (ii) above.

e. The project reserved water right shall always be consistent with:

(i) The DPR, except as modified by this Agreement;

(ii) The allocations, shortage provisions, delivery schedules, and consumptive use calculations described in this subsection;

(iii) Bureau of Reclamation procedures, which shall include, among other things, NEPA compliance and assurance that other project water users are not injured by any change in the use of project water.

f. The project reserved water right may be changed pursuant to the change in reserved water right procedures set forth in Article IV, section F; provided, however, that the project reserved water right shall not entitle the Tribe to any other reserved water right from the Mancos or Dolores Rivers, except, in the event of the failure of the project, the Tribe may convert the project reserved water right to a separate reserved storage or reserved direct flow water right from these rivers with the consent of the State Attorney General, the Mancos Water Conservancy District, and the Dolores Water Conservancy District, so that the Tribe and all other project beneficiaries will be placed in the same position in attempting to put their water rights to use.

g. Based upon the parties' expectation that the combined Highline-Towaoc Canal will be completed, subject to Congressional appropriations, the final settlement of the Tribe's reserved water rights claims on the Mancos and Dolores Rivers as described in this Agreement shall be subject to the following conditions:

(i) If the Dolores Project is completed so as to enable the delivery of water to the Reservation through the combined Highline-Towaoc Canal on or before May 1, 1994, then: (a) the settlement of the Tribe's pending reserved and appropriative water rights claims on both the Mancos River and the Dolores River contained in this Agreement shall become final; (b) the Tribe shall be entitled to the full project reserved water right as described in this subsection; and (c) the Tribe shall not be entitled to claim any additional reserved water rights, either on the Mancos River or on the Dolores River.

(ii) If the combined Highline-Towaoc Canal is not completed so as to enable the delivery of water to the Reservation by May 1, 1994, then by January 1, 1995, the Tribe, in consultation with the United States as trustee, must elect either: (a) to retain the project reserved water right by accepting any portion of the Tribes' allocations of water, excluding municipal and industrial water, for delivery directly from McPhee Reservoir; or (b) to commence litigation or renegotiation of its pending reserved water rights claims on the Mancos

River. If the Tribe, in consultation with the United States as trustee for the Tribe, has not elected to commence litigation or renegotiation of its pending claims on the Mancos River by notification to the parties by January 1, 1995, as provided below, then: (a) the Tribe shall be deemed to have elected to retain the project reserved water right by accepting delivery of its allocations of water directly from McPhee Reservoir, (b) the settlement of the Tribe's pending reserved and appropriative water rights claims on both the Mancos River and the Dolores River contained in this Agreement shall become final; and (c) the Tribe shall not be entitled to claim any additional reserved water rights either on the Mancos River or on the Dolores River. If the Tribe elects to commence litigation or renegotiation of its pending reserved water rights claims on the Mancos River, then: (a) the Tribe shall retain its project reserved water right to 1000 acre feet of municipal and industrial water; (b) the Tribe shall relinquish and forfeit the remainder of the project reserved water right from the Dolores Project as described in this subsection and all other pending reserved and appropriative water rights claims on the Dolores River; and (c) the Tribe shall not be entitled to claim any additional reserved water rights on the Dolores River; provided, however, that if the combined Highline-Towaoc Canal is at any time thereafter completed so as to enable the delivery of water to the Reservation or if the Tribe elects any time thereafter to receive an allocation of water from McPhee Reservoir, in addition to the 1,000 acre feet of municipal and industrial water, then: (a) the Tribe shall be entitled to the full project reserved water right as described in this subsection; (b) the Tribe shall not be entitled to claim any other reserved water rights on either the Mancos River or the Dolores River, and (c) the Tribe shall relinquish any then pending reserved water rights claims or any benefits it may have obtained by litigating or negotiating its reserved water rights claims on the Mancos River, including all reserved water rights which may have been decreed. Notice of the Tribe's election shall be made as follows: to the United States, through the Secretary of the Interior and the Attorney General; to the Tribes, through the respective Tribal Chairman; to the State, through the Attorney General; and to all other parties, through their respective offices.

h. Subject to Congressional appropriations, nothing in this section shall reduce or limit the present authorization of the United States to complete the construction of the Dolores Project in general conformity with the DPR, including the Towaoc drains, if needed.

i. Under no circumstances shall anything in this Agreement be construed as an admission, or be used by any party as evidence that the Tribe is or is not legally entitled to reserved water rights on the Dolores River. The project reserved water right shall have no precedential or presumptive value in the event the terms of this Agreement do not become final.

j. Repayment of that portion of the construction costs allocable to the Tribe's agricultural irrigation water allocation for which the Tribe is responsible shall be deferred pursuant to the Leavitt Act. Pursuant to the federal legislation required by Article VI, Section A, subsection 1.b: (a) repayment of the construction costs of the joint use facilities that are allocable to the Tribe's municipal and industrial water allocation shall be deferred, and interest thereon shall not accrue, until the water is used or temporarily disposed of by the Tribe; and (b) the reimbursable OM&R costs allocable to the Tribe's municipal and industrial water allocation shall be borne by the United States, subject to Congressional appropriations, until the water is used or temporarily disposed of by the Tribe. As an increment of municipal and industrial water is put to use or otherwise temporarily disposed of, prospective repayment of that increment's pro rata share of the allocable costs shall commence. If the Tribe does not take delivery of its agricultural irrigation or fish and wildlife development water through the combined Highline-Towaoc Canal, then the Tribe shall: (a) continue to remain responsible for such portion of the OM&R costs of the combined Highline-Towaoc Canal as will ensure that all other project users under the combined Highline-Towaoc Canal bear no greater OM&R costs than would have otherwise been the case; and (b) ensure that deliveries to, and carriage losses of, all other project water users under the combined Highline-Towaoc Canal are not adversely affected. Similarly, the District shall ensure that if non-Indian water users do not take delivery of their agricultural irrigation water through the combined Highline-Towaoc Canal there will not be an increase in the OM&R costs or a reduction in deliveries to the Tribe.

2. Animas-La Plata Project

a. The Tribe shall receive a project reserved water right to water supplied from the Animas-La Plata Project. This project reserved water right shall have an 1868 priority date, shall be subordinated to all water rights decreed and senior to the Animas-La Plata Project, and shall share on a pro rata basis the priority of the Animas-La Plata Project, which has an adjudication date of March 21, 1966, and an appropriation date of September 2, 1938, C.A. 1751-B, District Court, La Plata County, Colorado.

b. The project reserved water right shall entitle the Tribe to receive and beneficially use, on that part of the Ute Mountain Ute Reservation within the State or within the boundaries of the Animas-La Plata Water Conservancy District, the following allocations of water from the Animas-La Plata

Project, as measured at Ridges Basin Dam and Reservoir or at the point on the Animas River where diversions are made to the Durango Pumping Plant or, for La Plata River water, at the point on the La Plata River where water is diverted for project purposes:

(i) a maximum of 6,000 acre-feet per annum of municipal and industrial water; and

(ii) a maximum of 26,300 acre-feet per annum of agricultural irrigation water.

The project reserved water right shall not exceed the total of the above allocations; provided, however, that nothing herein shall limit the Tribe's right to receive an additional 900 acre-feet per annum of agricultural irrigation water in accordance with the DPR.

Pending completion of the construction of the Ute Mountain Pumping Plant, the reach of the Dry Side Canal beyond the turn out to the Dry Side Lateral, and the laterals on the Ute Mountain Ute Reservation, the Tribe's allocations of water will be delivered to the Tribe at Ridges Basin Reservoir or at the point on the Animas River where diversions are made to the Durango Pumping Plant. When the Tribe takes delivery of its municipal and industrial water allocation at these locations, the timing of the deliveries of its annual municipal and industrial water allocation may be at the Tribe's discretion, so long as neither the project supply nor other project users are adversely affected. The Tribe shall take monthly deliveries of its agricultural irrigation and municipal and industrial water allocations in the manner contemplated by the DPR; provided that the Tribe may take delivery of its agricultural irrigation and municipal and industrial water at its discretion so long as neither the project supply nor other project users are adversely affected.

c. During periods of water shortage, deliveries of project water, or deliveries of the supply of water available under the project priority, to the Tribe and to all others shall be as follows:

(i) the municipal and industrial water allocations as quantified in the DPR shall first be fully satisfied; and

(ii) the agricultural irrigation water allocations as quantified in the DPR shall share shortages on a pro rata basis even if changed to other beneficial uses.

The sharing of shortages in the project's water supply shall govern the actual amount of agricultural irrigation water delivered to the Tribe whether or not the average supply of 25,560 acre-feet per annum as contemplated by the DPR is actually achieved.

d. In proceedings pursuant to Article IV, Section F, the computations concerning the Tribe's historic beneficial use of water shall be based upon:

(i) actual historic monthly deliveries of the available annual supply, measured at Ridges Basin Reservoir or at the point on the Animas River where diversions are made to the Durango Pumping Plant, or if there has not yet been full use of water, then the Tribe shall be deemed to have historically made beneficial use of any unused portion of each year's available water based upon the following monthly percentage distributions of the available water:

Month	Agricultural Irrigation Water	M&I Water
October	2.0%	20.0%
November	0	0
December	0	0
January	0	0
February	0	0
March	0	0
April	1.0	20.0
May	11.0	20.0
June	26.0	0
July	31.0	0
August	18.0	20.0
September	11.0	20.0
Totals	100.0%	100.0%

(ii) actual historic use or, if there has not yet been full use of water, then the Tribe shall be deemed to have historically consumed 100 percent of the unused portion of the water available to the Tribe from its annual municipal and industrial allocation and 80.1 percent of the unused portion of the water available to the Tribe from its annual agricultural irrigation allocation; or

(iii) any agreement which may be entered into among the State, the Tribes, the Animas-La Plata Water Conservancy District, and the United States Bureau of Reclamation which modifies (i) and (ii) above.

e. The project reserved water right shall always be consistent with:

(i) the allocations, shortage provisions, delivery schedules, and consumptive use calculations described in this subsection;

(ii) Bureau of Reclamation procedures, which shall include, among other things, NEPA compliance and assurance that all other project water users are not injured by any change in the use of project water;

(iii) The Animas-La Plata Project Compact, section 37-64-101, C.R.S. (1973); and

(iv) The La Plata River Compact, section 37-64-101, C.R.S. (1973).

f. The final settlement of the Tribe's reserved water rights claims on the Animas and La Plata Rivers as described in this Agreement shall be subject to the following conditions:

(i) If Ridges Basin Reservoir, Long Hollow Tunnel, and the Dry Side Canal to the turnout to the Dry

Side Lateral are completed so as to enable the delivery of water to the Tribe as described in this subsection on or before January 1, 2000, then: (a) the settlement of the Tribe's pending reserved and appropriative water rights claims on the Animas and La Plata Rivers contained in this Agreement shall become final; (b) the Tribe shall be entitled to the full project reserved water right as described in this subsection; and (c) the Tribe shall not be entitled to claim any additional reserved water rights either on the Animas River or on the La Plata River.

(ii) If Ridges Basin Reservoir, Long Hollow Tunnel, and the Dry Side Canal to the turnout to the Dry Side Lateral are not completed so as to enable the delivery of water to the Tribe as described in this subsection by January 1, 2000, then by January 1, 2005, the Tribe, in consultation with the United States as trustee, must elect either: (a) to retain the project reserved water right; or (b) to commence litigation or renegotiation of its pending reserved water rights claims on the Animas and La Plata Rivers. If the Tribe, in consultation with the United States as trustee, has not elected to commence litigation or renegotiation of its pending claims on the Animas and La Plata Rivers by notification to the parties by January 1, 2005, as provided below, then: (a) the Tribe shall be deemed to have elected to retain its project reserved water right; (b) the settlement of the Tribe's pending reserved and appropriative water rights claims on the Animas and La Plata Rivers contained in this Agreement shall become final; and (c) the Tribe shall not be entitled to claim any additional reserved water rights either on the Animas River or on the La Plata River. If the Tribe elects to commence litigation or renegotiation of its pending reserved water rights claims on the Animas and La Plata Rivers then the Tribe shall relinquish and forfeit the project reserved water right from the Animas-La Plata Project as described in this subsection; provided, however, that if Ridges Basin Reservoir, Long Hollow Tunnel, and the Dry Side Canal to the turnout to the Dry Side Lateral are at any time thereafter completed so as to enable the delivery of water to the Tribe or if the Tribe elects at any time thereafter to receive an allocation of water from Ridges Basin Reservoir, then: (a) the Tribe shall be entitled to the full project reserved water right as described in this subsection; (b) the Tribe shall not be entitled to claim any other reserved water rights either on the Animas River or on the La Plata River; and (c) the Tribe shall relinquish any then pending reserved water rights claims or any benefits it may have obtained by litigating or renegotiating its reserved water rights claims on the Animas or La Plata Rivers, including all reserved water rights which may have been decreed. Notice of the Tribe's election shall be made as follows: to the United States, through the Secretary of the Interior and the Attorney General; to the

Tribes, through the respective Tribal Chairman; to the State, through the Attorney General; and to all other parties, through their respective offices.

g. Under no circumstances shall anything in this Agreement be construed as an admission, or be used by any party as evidence, that the Tribe is or is not legally entitled to reserved water rights on the Animas or La Plata Rivers. The project reserved water right shall have no precedential or presumptive value in the event the terms of this Agreement do not become final.

h. Repayment of that portion of the construction costs allocable to the Tribe's agricultural irrigation water allocation for which the Tribe is responsible shall be deferred pursuant to the Leavitt Act. Pursuant to the federal legislation required by Article VI, Section A, subsection 1.b, reimbursable OM&R costs allocable to the Tribe's agricultural irrigation water allocation shall be borne by the United States, subject to Congressional appropriations, until the water is used or temporarily disposed of by the Tribe. Pursuant to the federal legislation required by Article VI, Section A, subsection 1.b: (a) repayment of the construction costs allocable to the Tribe's municipal and industrial water allocation shall be deferred, and interest thereon shall not accrue, until the water is used or temporarily disposed of by the Tribe; and (b) the reimbursable

OM&R costs allocable to the Tribe's municipal and industrial water allocation shall be borne by the United States, subject to Congressional appropriations, until the water is used or temporarily disposed of by the Tribe. As an increment of water is put either to municipal and industrial use or to agricultural irrigation use or temporarily disposed of by the Tribe, prospective repayment of that increment's pro rata share of the allocable costs shall commence. The OM&R costs allocable to the Tribe which are to be borne by the United States shall include any OM&R costs for which the Tribe is responsible pursuant to paragraph i. below, until water is used or temporarily disposed of by the Tribe under that paragraph.

i. If the Tribe does not take delivery of its Animas-La Plata Project allocations from the Ridges Basis Pumping Plant through the Long Hollow Tunnel and the Dry Side Canal, even though those facilities have been constructed with the capacities contemplated by the DPR, then the Tribe shall: (a) continue to remain responsible for such portion of the OM&R costs of the Ridges Basin Pumping Plant, the Long Hollow Tunnel and the Dry Side Canal so as to ensure that all other project users bear no greater OM&R costs than would have otherwise been the case; and (b) ensure that deliveries to, and carriage losses of, all other project users are not adversely affected. On or before November 1, 1988, the Tribe may elect to have the United

States Bureau of Reclamation reduce the capacity of the Ridges Basin Pumping Plant, the Long Hollow Tunnel and the Dry Side Canal, and any associated delivery facilities, from the capacities contemplated by the DPR; provided that any additional capital costs to other water users occasioned by such election must be equitably apportioned. If such an election is made, then the Tribe shall: (a) be required to take delivery of its municipal and industrial water allocation and its agricultural irrigation water allocation at the Ridges Basin Reservoir or at the point on the Animas River where diversions are made to the Durango Pumping Plant, or, for La Plata River water, at the point on the La Plata River where water is diverted for project purposes; (b) continue to remain responsible for such portion of the OM&R costs of the Ridges Basin Pumping Plant, the Long Hollow Tunnel and the Dry Side Canal as will ensure that all other project users bear no greater OM&R costs per acre-foot of water than would have been the case had the capacity of these facilities not been reduced; and (c) ensure that deliveries to, and carriage losses of, all other project users are not adversely affected. Whether or not the Tribe so elects, if water users other than the Ute Mountain Ute Indian Tribe do not take delivery of their project water through the Long Hollow Tunnel and the Dry Side Canal then there will not be an increase in the OM&R costs or a reduction in deliveries to the Tribe.

3. Other Sources

The Tribe shall receive:

a. A non-project reserved water right for direct flow diversions and/or storage of 21,000 acre-feet per annum from the Mancos River for the irrigation of 7,200 acres of Tribal lands within the Mancos River drainage basin. This right shall have an 1868 priority date, but shall be subordinated to all rights with an adjudication date prior to 1985. For measurement purposes, the delivery point for water under this right will be at the point where the Mancos River enters the Ute Mountain Ute Indian Reservation on the south line of section 2U, T34N, R18W, N.M.P.M., at a point below the confluence of the Mancos River and Weber Canyon. When water is put to use or temporarily disposed of by the Tribe, the Tribe agrees to operate and maintain a stream gauging station at this point and to allow the State Engineer access to this gauging station. Notwithstanding the provisions of Article IV, Section F of this Agreement, as long as the water is diverted south of the delivery point as surface flow and applied to beneficial use on Tribal lands within the Mancos River drainage, no change in place of use, as described in Article IV, Section F of this Agreement, shall be required.

b. A non-project reserved water right for direct flow diversions for 4,800 acre-feet per annum from the

Navajo Wash for the irrigation of 1,200 acres of Tribal lands within the Navajo Wash drainage basin at a maximum diversion rate of 15 cfs. This right shall have an 1868 priority date, but shall be subordinated to all rights with an adjudication date prior to 1985 and shall be subject to the decree and stipulation in Case No. 81 CW 126, Colorado District Court for Water Division No. 7. The Tribe's existing state appropriative water rights on Navajo Wash will be relinquished, upon confirmation by the Colorado District Court for Water Division No. 7 of the non-project reserved water right provided for in this paragraph.

c. A non-project reserved water right for direct flow diversions of 1600 acre-feet per annum from the main stem of the San Juan River within the southwestern part of the Ute Mountain Ute Indian Reservation in Colorado, for the irrigation of 640 acres of Tribal lands within the San Juan mainstem drainage basin at a maximum diversion rate of 10 cfs. This right shall have a priority date of 1868.

B. SOUTHERN UTE INDIAN TRIBE

The Southern Ute Indian Tribe shall be entitled to the rights described below to beneficially use water from the following sources:

1. Animas-La Plata Project

a. The Tribe shall receive a project reserved water right to water supplied from the Animas-La Plata Project. This right shall have an 1868 priority date, shall be subordinated to all water rights decreed and senior to the Animas-La Plata Project, and shall share on a pro rata basis the priority of the Animas-La Plata Project, which has an adjudication date of March 21, 1966, and an appropriation date of September 2, 1938, C.A. 1751-B, District Court, La Plata County, Colorado.

b. The project reserved water right shall entitle the Tribe to receive and beneficially use, on that part of the Southern Ute Reservation within the State or within the boundaries of the Animas-La Plata Water Conservancy District, the following allocations of water from the Animas-La Plata Project, as measured at Ridges Basin Dam and Reservoir or at the point on the Animas River where diversions are made to the Durango Pumping Plant, or, for La Plata River water, at the point on the La Plata River where water is diverted for project purposes:

(i) a maximum of 26,500 acre-feet per annum of municipal and industrial water; and

(ii) a maximum of 3,400 acre-feet per annum of agricultural irrigation water.

The project reserved water right shall not exceed the total of the above allocations.

Pending completion of the Southern Ute Reservoir, the Tribe's municipal and industrial water allocation will be delivered to the Tribe at Ridges Basin Reservoir or at the point on the Animas River where diversions are made to the Durango Pumping Plant, or, for La Plata River water, at the point on the La Plata River where water is diverted for project purposes. The Tribe shall take monthly deliveries of its agricultural irrigation water allocation in the manner contemplated by the DPR; provided that the Tribe may take its agricultural irrigation water at its discretion so long as neither the project supply nor other project users are adversely affected.

c. During periods of water shortage, deliveries of project water, or deliveries of the supply of water available under the project priority, to the Tribe and to all others shall be as follows:

(i) the municipal and industrial water allocations as quantified in the DPR shall first be fully satisfied; and

(ii) the agricultural irrigation water allocations as quantified in the DPR shall share shortages on a pro rata basis even if changed to other beneficial uses.

The sharing of shortages in the project's water supply shall govern the actual amount of agricultural irrigation water delivered to the Tribe whether or not the average supply of 3,300 acre-feet per annum as contemplated by the DPR is actually achieved.

d. In proceedings pursuant to Article IV, Section F, the computations concerning the Tribe's historic beneficial use of water shall be based upon:

(i) actual historic monthly deliveries of the available annual supply, measured at Ridges Basin Reservoir or at the point on the Animas River where diversions are made to the Durango Pumping Plant, or, if there has not yet been full use of water, then the Tribe shall be deemed to have historically made beneficial use of any unused portion of each year's available water based upon the following monthly percentage distributions of the available water:

Month	Agricultural Irrigation Water	M&I Water
October	0%	8%
November	0	8
December	0	8
January	0	8
February	0	8
March	0	8
April	0	8
May	9	8
June	29	9
July	32	9
August	18	9
September	12	9
Totals	100%	100%

(ii) actual historic use or, if there

has not yet been full use of water, then the Tribe shall be deemed to have historically consumed 90.5 percent of the unused portion of the water available to the Tribe from its annual municipal and industrial water allocation and 78.8 percent of the unused portion of the water available to the Tribe from its annual agricultural irrigation water allocations; or

(iii) any agreement which may be entered into among the State, the Tribes, the Animas-La Plata Water Conservancy District and the United States Bureau of Reclamation which modifies (i) and (ii) above.

e. The project reserved water right shall always be consistent with:

(i) the allocations, shortage provisions, delivery schedules, and consumptive use calculations described in this section;

(ii) Bureau of Reclamation procedures, which shall include, among other things, NEPA compliance and assurance that all other project water users are not injured by any change in the use of project water;

(iii) The Animas-La Plata Project Compact, section 37-64-101, C.R.S. (1973); and

(iv) The La Plata River Compact, section 37-64-101, C.R.S. (1973).

f. The final settlement of the Tribe's

reserved water rights claims on the Animas and La Plata Rivers as described in this Agreement shall be subject to the following conditions:

(i) If Ridges Basin Reservoir and the facilities necessary for the delivery of the Tribe's agricultural irrigation water are completed so as to enable the delivery of water to the Tribe as described in this subsection on or before January 1, 2000, then: (a) the settlement of the Tribe's pending reserved and appropriative water rights claims on the Animas and La Plata Rivers contained in this Agreement shall become final; (b) the Tribe shall be entitled to the full project reserved water right as described in this subsection; and (c) the Tribe shall not be entitled to claim any additional reserved water rights either on the Animas River or on the La Plata River.

(ii) If Ridges Basin Reservoir and the facilities necessary for the delivery of the Tribe's agricultural irrigation water are not completed so as to enable the delivery of water to the Tribe as described in this subsection by January 1, 2000, then by January 1, 2005, the Tribe, in consultation with the United States as trustee, must elect either; (a) to retain the project reserved water right; or (b) to commence litigation or renegotiation of its reserved water rights claims on the Animas and La Plata Rivers. If the Tribe, in consultation with the United States as trustee, has not elected to commence litigation or renegotiation of its pending claims on the Animas and La Plata Rivers by notification to the parties by January 1, 2005, as provided below, then: (a) the Tribe shall be deemed to have elected to retain its project reserved water right; (b) the settlement of the Tribe's pending reserved and appropriative water rights claims on the Animas and La Plata Rivers contained in this Agreement shall become final; and (c) the Tribe shall not be entitled to claim any additional reserved water rights either on the Animas River or on the La Plata River. If the Tribe elects to commence litigation or renegotiation of its pending reserved water rights claims on the Animas and La Plata Rivers, then the Tribe shall relinquish and forfeit the project reserved water right from the Animas-La Plata Project as described in this subsection; provided, however that if Ridges Basin Reservoir and the facilities necessary for the delivery of the Tribe's irrigation water are at any time thereafter completed so as to enable the delivery of water to the Tribe or if the Tribe elects at any time thereafter to receive an allocation of water from Ridges Basin Reservoir, then: (a) the Tribe shall be entitled to the full project reserved water right as described in this subsection; (b) the Tribe shall not be entitled to claim any other reserved water rights either on the Animas River or on the La Plata River; and (c) the Tribe shall relinquish any then pending reserved water rights claims or any benefits it may have obtained by litigating or renegotiating its reserved water rights claims on the Animas or La Plata Rivers, including all reserved water rights which may have been decreed. Notice of the Tribe's election shall be made as follows: to the United States, through the Secretary of the Interior and the Attorney General; to the Tribes, through the respective Tribal Chairman; to the State, through the Attorney General; and to all other parties, through their respective offices.

g. Under no circumstances shall anything in this Agreement be construed as an admission, or be used by any party as evidence, that the Tribe is or is not legally entitled to reserved water rights on the Animas or La Plata Rivers. The project reserved water right shall have no precedential or presumptive value in the event the terms of this Agreement do not become final.

h. Repayment of that portion of the construction costs allocable to the Tribe's agricultural irrigation water allocation for which the Tribe is responsible shall be deferred pursuant to the Leavitt Act. Pursuant to the federal legislation required by Article VI, Section A, subsection 1.b, reimbursable OM&R costs allocable to the Tribe's agricultural irrigation water allocation shall be borne by the United States, subject to Congressional appropriations, until the water is used or temporarily disposed of by the Tribe. Pursuant to the federal legislation required by Article VI, Section A, subsection 1.b: (a) repayment of the construction costs allocable to the Tribe's municipal and industrial water allocation shall be deferred, and interest thereon shall not accrue, until the water is used or temporarily disposed of by the Tribe; and (b) the reimbursable OM&R costs allocable to the Tribe's municipal and industrial water allocation shall be borne by the United States, subject to Congressional appropriations, until the water is used or temporarily disposed of by the Tribe. As an increment of water is put either to municipal and industrial use or to agricultural irrigation use or temporarily disposed of by the Tribe, prospective repayment of that increment's pro rata share of the allocable costs shall commence. The OM&R costs allocable to the Tribe which are to be borne by the United States shall include any OM&R costs for which the Tribe is responsible pursuant to paragraph i. below, until the water is used or temporarily disposed of by the Tribe under that paragraph.

i. If the Tribe does not take delivery of its Animas-La Plata Project allocations from the Ridges Basin Pumping Plant through the Long Hollow Tunnel and the Dry Side Canal, even though those facilities have been constructed with the capacities contemplated by the DPR, then the Tribe shall: (a) continue to remain responsible for such portion of the OM&R costs of the Ridges Basin Pumping Plant, the Long Hollow Tunnel and the

Dry Side Canal so as to ensure that all other project users bear no greater OM&R costs than would have otherwise been the case; and (b) ensure that deliveries to, and carriage losses of, all other project users are not adversely affected. On or before November 1, 1988, the Tribe may elect to have the United States Bureau of Reclamation reduce the capacity of the Ridges Basin Pumping Plant, the Long Hollow Tunnel and the Dry Side Canal, and any associated delivery facilities, from the capacities contemplated by the DPR; provided that any additional capital costs to other water users occasioned by such election must be equitably apportioned. If such an election is made, then the Tribe shall: (a) be required to take delivery of its municipal and industrial water allocation and its agricultural irrigation water allocation at the Ridges Basin Reservoir or at the point on the Animas River where diversions are made to the Durango Pumping Plant; (b) continue to remain responsible for such portion of the OM&R costs of the Ridges Basin Pumping Plant, the Long Hollow Tunnel and the Dry Side Canal as will ensure that all other project users bear no greater OM&R costs per acre-foot of water than would have been the case had the capacity of these facilities not been reduced; and (c) ensure that deliveries to, and carriage losses of, all other project users are not adversely affected. Whether or not the Tribe so elects, if water users other than the Southern Ute Indian Tribe do not take delivery of their project water though the Long Hollow Tunnel and the Dry Side Canal then there will not be an increase in the OM&R costs or a reduction in deliveries to the Tribe.

2. Pine River

The Tribe shall be entitled to retain its reserved water right from the Pine River with an 1868 priority date for 181.7 cfs, as set forth in the 1930 federal decree and the 1934 state decree, except as modified herein, and shall be entitled to a 1/6 interest in the Vallecito Reservoir, Reservoir No. 1, Appropriation Priority No. 1965-1, decreed in Civil Action No. 1848-B, La Plata County.

3. Other Sources

The Tribe shall be entitled to the rights to beneficially use water as quantified below, unless otherwise specified: (1) for agricultural irrigation purposes; (2) during an irrigation season of May 1 to September 30; (3) at the locations specified on the Tribal maps provided to the State of Colorado on December 5, 1985; and (4) on Tribal lands. Points of diversion will be identified by stream reach on maps to be attached to the consent decree provided for in Article VI, Section A of this Agreement.

All parcel numbers used in the following descriptions refer to the numbers shown on the December 5, 1985, Tribal maps. Copies of these Tribal maps will be attached to and incorporated in the proposed stipulation and consent decree submitted to the Colorado District Court for Water Division No. 7 pursuant to the procedure described in Article VI, Section A.

a. Florida River

(i) The Tribe agrees to accept Florida Project water stored behind Lemon Dam in exchange for and in lieu of its reserved water rights claims for the lands within parcels 1, 2, 3 and 15. The Florida Water Conservancy District agrees to allocate 563 acre-feet per annum of project waters to the Tribe for these four parcels. The Tribe will be responsible for paying operation and maintenance charges assessed uniformly by the Florida Water Conservancy District on the Florida Project water. Repayment of that portion of the construction costs of the project which have been allocated to the 563 acre-feet of agricultural irrigation water for which the Tribe is responsible shall be deferred by the Secretary pursuant to the Leavitt Act and the Florida Water Conservancy District's current repayment obligation shall not change.

It is understood that the full project supply may not be available in times of shortage, and that the Tribe will share the reduced supply pro rata with the other project users. The Tribe will take its water subject to state water law, the District's repayment contract with the United States Bureau of Reclamation, and any of the ditch company's or the Florida Water Conservancy District's rules or guidelines.

The water may be used on parcels 1, 2, 3 and 15 as follows:

Parcel 1:

A maximum of 134 net acres are to be irrigated with this water, with a duty of water of 2 acre-feet per acre per year, for a maximum of 268 acre-feet per year. The flow rate of delivery is to be limited to 1 cfs per 80 acres, for a maximum of 1.68 cfs.

Parcel 2:

A maximum of 97 net acres are to be irrigated with this water, with a duty of water of 2 acre-feet per acre per year, for a maximum of 194 acre-feet per year. The flow rate of delivery is to be limited to 1 cfs per 80 acres, for a maximum of 1.21 cfs.

Parcel 3:

A maximum of 36.1 net acres are to be irrigated with a duty of water of 2.54 acre-feet per acre per year, for a maximum of 91.7 acre-feet per year. The flow rate of delivery is to be limited to 1 cfs per 80 acres, for a maximum of 0.45 cfs.

Parcel 15:

A maximum of 2.7 net acres are to be irrigated with a duty of water of 2.54 acre-feet per acre per year, for a maximum of 6.85 acre-feet per year. The flow rate of delivery is to be limited to 1 cfs per 80 acres, for a maximum of .04 cfs.

Diversions for parcels 1 and 2 will be made at the Florida Farmers Ditch headgate. It will be the responsibility of the various Florida ditch companies serving Florida mesa lands to improve their delivery systems in order that the water requested for parcels 1 and 2 under the above subparagraphs can be delivered to the edge of the parcels at no cost to the Tribe for such improvements. There is no delivery agreement for water to parcels 3 and 15.

The Tribe agrees to execute contract(s) simultaneously with submission of the proposed stipulation described in Article VI, section A, with the Florida Water Conservancy District and the United States Bureau of Reclamation governing its participation in the Florida Project, as described herein, as well as to execute contracts governing its receipt of the 2000 acre-feet of water previously allocated to the Tribe from the Florida Project.

(ii) The Tribe shall receive non-project reserved water rights for parcels 4, 5, 6, 9, 10, 11, 12, 13, and 14 as shown in Table 1. Water for these parcels shall have a priority date of 1868 but shall be subordinated to all rights with an adjudication date prior to January 1, 1976.

TABLE 1

Parcels
in the Florida Basin

Parcel	Net Acreage	Diversion Rate (cfs)	Annual Volume (acre-feet)
4	103	1.29	206
5	86	1.08	172
6	21	0.26	42
9	38	0.48	76
10	29	0.36	58
11	25	0.31	50
12	105	1.31	210
13	57	0.71	114
14	81	1.01	162
TOTAL	545	6.81	1090

(iii) No water rights are recognized for parcels 7 and 8.

b. Stollsteimer Creek

The Tribe shall receive the following non-project reserved water rights, which will be used to irrigate 600 acres, which are within the 781 acres of arable land within the watershed identified on the Tribal maps:

(i) A non-project reserved water right with an 1868 priority date for storage of 1850 acre-feet per annum in Pargin Reservoir, Reservoir No. 24 (a/k/a Lake Capote), with no refill right.

(ii) A non-project reserved water right with a 1986 priority date for one refill of Pargin Reservoir in the amount of 1,850 acre-feet. The Tribe owns an existing state storage reservoir right for 530.6 acre-feet of water in Pargin Reservoir, adjudicated on April 19, 1962 in Archuleta County District Court, with priority No. 24 in Case Nos. 73 and 308. The right will be relinquished upon confirmation by the Colorado District Court for Water Division No. 7 of the reserved rights described in this subparagraph and in subparagraph (i) above.

(iii) A non-project reserved water right for 2 cfs from Stollsteimer Creek. This right shall have a priority and use equivalent to, and be diverted and used at the same locations and for the same purposes as, the Cruther Ditch state appropriative right, adjudicated on November 13, 1912 in Archuleta County District Court, with priority No. 117 in Civil Action 73 and 308; however, this right shall be subordinated to all direct flow rights with an adjudication date prior to 1986 on Stollsteimer Creek. The Cruther Ditch state appropriative right shall not be considered to have been abandoned, but shall be relinquished upon confirmation by the Colorado District Court for Water Division No. 7 of the reserved water right described in this paragraph.

(iv) A non-project reserved water right

for 3.5 cfs from Stollsteimer Creek. This right shall have a priority and use equivalent to, and be diverted and used at the same locations and for the same purposes as, the Washington Flats Ditch state appropriative right adjudicated on June 25, 1928, in Archuleta County District Court, with priority No. 206 in Case No. 73 and 308. The Washington Flats Ditch state appropriative right shall be relinquished upon confirmation by the Colorado District Court for Water Division No. 7 of the reserved water right described in this paragraph.

The augmentation plan developed by Fairfield-Pagosa, as described in Case No. W958-72, Water Division No. 7, subordinates 8.5 cfs of the Linn and Clark water right to other Stollsteimer Creek state appropriative water rights, including the Washington Flats Ditch. The subordination of the Linn and Clark water right shall be maintained for the benefit of the Washington Flats Ditch direct-flow reserved water right in the event the present augmentation plan described in W958-72 is modified.

c. Piedra River

The Tribe shall receive a non-project reserved water right with an 1868 priority date for direct flow diversions of 1595 acre-feet per annum from the mainstem of the Piedra River for the irrigation of 535 net acres of land at a maximum flow rate of 1 cfs per 60 acres, for a maximum diversion rate of 8.9 cfs. A portion of the water for parcel 4 will be diverted through the existing M.E. and M. Ditch. The parcels and acreages are as set out in the following Table 2. Lands requiring pumping shall have a duty of water of 2.54 acre-feet/acre, while lands proposed to be flood-irrigated shall have a duty of water of 3.0 acre-feet/acre.

TABLE 2

Parcels
along the Mainstem Piedra River

Parcel	Net Acreage	Diversion Rate (cfs)	Annual Volume (acre-feet)	
1	289	4.81	867	
2	40	0.67	110	(21.9 acres pumped)
3	162	2.69	486	
4	44	0.73	132	
TOTAL	535	8.90	1595	

d. Devil Creek

The Tribe shall receive a non-project reserved water right with an 1868 priority date subordinated to all rights with an adjudication date prior to 1976 for direct flow diversions of 183 acre-feet per annum from Devil Creek for the irrigation of 61 net acres of land. The duty of water shall be 3 acre-feet/acre.

e. San Juan River

The Tribe shall receive a non-project reserved water right with an 1868 priority date for direct flow diversion of 1530 acre-feet per annum from the San Juan River for the irrigation of 510 net acres of land at a maximum flow rate of 1 cfs per 60 acres, for a maximum total diversion rate of 8.5 cfs, which will be limited to 4 cfs in September.

The Tribe is currently using a portion of the 1962 Carr Ditch right, 73CA309, a right owned by a non-Indian and shared with other non-Indian users, to irrigate these lands. The Tribe agrees to make the necessary modifications of, and reductions to, the existing Carr Ditch right in the amount of approximately 480 acre-feet per annum of water and to relinquish all claim to water taken from the Carr Ditch and used to irrigate approximately 140 acres of Tribal land, in the Colorado District Court for Water Division No. 7. The State agrees to support the Tribe in its efforts.

The duty of water shall be 2.54 acre-feet per acre for lands requiring pumping, and 3.0 acre-feet per acre for lands proposed to be flood irrigated. The parcels and acreage are as set out in the following Table 3.

TABLE 3

Parcel	Net Acreage	Diversion Rate (cfs)	Annual Volume (acre-feet)	
1	23	0.38	69	
2	29	0.48	87	
3	120	2.00	360	
4	338	5.64	1014	(86.4 acres pumped)
TOTAL	510	8.50	1530	

f. Round Meadow Creek

The Tribe shall receive a non-project reserved water right with an 1868 priority date for direct flow diversions of 975 acre-feet per annum from Round Meadow Creek for the irrigation of 325 net acres of land at a maximum flow rate of 1 cfs per 60 acres for a maximum total diversion rate of 5.4 cfs. The duty of water shall be 3 acre-feet/acre. The diversion point shall be on Round Meadow Creek.

g. Cat Creek

The Tribe shall receive a non-project reserved water right with an 1868 priority date for direct flow diversions of 1372 acre-feet per annum from Cat Creek for the irrigation of 482 net acres of land, at a maximum flow rate of 1 cfs per 60 acres, for a maximum total diversion rate of 8.0 cfs. The duty of water shall be 3 acre-feet/acre for the 318 acres proposed to be flood-irrigated, and 2.54 acre-feet/acre for the 164 acres which require pumping.

h. Navajo River

No reserved water rights are recognized for the Navajo River.

C. FURTHER QUANTIFICATION

1. Existing Uses

a. Any existing beneficial use of surface water or ground water for which the Tribes claim a reserved water right, other than those provided for in this Article and other than existing uses of water from the Pine River, shall be identified and inventoried as to location, quantity, use, and other reasonably necessary information by June 15, 1987, or such other date upon which the State, the Tribes, and the United States shall mutually agree.

b. All parties to this Agreement will have the right to review the resulting inventory, including the parameters of the uses identified, which shall be subject to the mutual agreement of the parties. The parties shall not unreasonably withhold their agreement.

c. Uses identified and agreed upon shall be included in the proposed stipulation for inclusion in the consent decree and submitted to the Colorado District Court for Water Division No. 7 by the parties as additions to the reserved water rights awarded to the Tribes pursuant to this Agreement.

2. Future Domestic and Livestock Tributary Ground Water Uses

a. A non-project reserved water right for the beneficial use of tributary ground water with an 1868 priority date from future individual domestic and livestock wells on the Ute Mountain Ute Reservation shall be recognized in the amount of 350 acre-feet per annum in the McElmo Creek drainage basin and water tributary thereto and 1,500 acre-feet per annum in the remainder of the Reservation.

b. A non-project reserved water right with an 1868 priority date for the beneficial use of tributary ground water from future individual domestic and livestock wells on the Southern Ute Reservation shall be recognized in the amount of 2,000 acre-feet per annum; provided that in the La Plata River drainage such individual domestic and livestock wells shall be limited as follows:

(i) the well will be the only well on a residential site and shall be used solely for in-household purposes for one single-family dwelling; or

(ii) the well will be the only well on a 35 acre site, shall not exceed 15 gallons per minute of production, and shall be used for ordinary household purposes, fire protection, the watering of poultry, domestic animals, and livestock on farms and ranches, the irrigation of not over one acre of home gardens and lawns, and for not more than three single-family dwellings.

This provision will not preclude the United States, the Tribe and the State from agreeing on an alternative allocation plan prior to June 15, 1987 or such other date upon which the State, the Tribes and the United States shall mutually agree.

c. The further parameters of the future individual domestic and livestock water uses, which may include place of use, diversion and depletion amounts, and metering and gauging requirements, shall be identified by the Tribes by June 15, 1987, or such other date upon which the State, the Tribes and the United States shall mutually agree, and shall be subject to the reasonable mutual agreement of the State and the affected Tribe.

D. DISPUTES

The parties shall present to the Colorado District Court for Water Division No. 7 all disputes over whether water is being beneficially used in accordance with Article III of this Agreement.

IV. ADMINISTRATION

A. INTRODUCTION

The State, the Tribes, and the United States acknowledge the hydrologic relationship between surface and underground use of water and among the Tribes' project and non-project reserved water rights, the water rights used by non-Indians within Colorado, and the waters used outside the State. Accordingly, the parties recognize the need for a cooperative and coordinated administration of water rights arising under state law and the project and non-project reserved water rights secured to the Tribes by this Agreement, and intend to provide for such administration with this Article IV. The purpose of this Article is to establish the means by which the project and non-project water rights confirmed in Article III shall be administered. Administration by the State Engineer shall ensure that the water rights of all users, including the Tribes, are fully protected. The Tribes agree to coordinate their administrative responsibilities under this Agreement with the Secretary when those administrative responsibilities affect the water rights of allottees. The Tribes agree to allow the State Engineer access to Reservation lands solely for the purpose of performing his administrative duties under this Agreement.

B. SURFACE DIVERSIONS

The State Engineer, in a manner consistent with the agreements contained herein, shall have primary administrative responsibility over all waters apportioned to the Tribes at the points of diversion located on each river. The Tribes shall have primary administrative responsibility over all the waters within the Tribes' canal distribution systems.

When water is put to use under this Agreement, the Tribes agree to install and maintain headgates on the diversion points from the rivers and to install and maintain necessary totalizing or accumulating meters, gauges, or other measuring devices on these headgates, to inspect the recorders on a weekly basis, and to report to the State Engineer the reading of these meters as often as needed to ensure compliance with this Agreement. The Tribes agree to allow reasonable inspection of headgates by the State Engineer upon request. The Tribes further agree to keep their diversion, transportation, and storage facilities in good repair.

The Tribes agree to annually provide the State Engineer with: (1) aerial photos or remote sensing images of the lands irrigated; or (2) Bureau of Indian Affairs Crop Reports, showing the lands irrigated. If these aerial photos, remote sensing images, or crop reports are unsatisfactory, the Tribes agree to allow the State Engineer access to Tribal lands to inventory the number and location of irrigated acres. The Tribes may elect to allow the State Engineer to conduct an annual examination of the irrigated lands so that the State Engineer can inventory the number and location of irrigated acres in substitution for the images and reports. At least once in every five-year period the Tribes shall provide the State Engineer with aerial photos or remote sensing images, satisfactory to the State Engineer, or shall allow the State Engineer access to Tribal lands to inventory the location and number of irrigated acres.

The Tribes agree that when there is an administrative call on the waters of the rivers and a demonstrated likelihood of shortage exists, the Tribes will permit the State Engineer to monitor the Tribes' diversions of water within the priority system to ensure that the waters are being beneficially used in compliance with the terms of this Agreement.

The parties shall present to the Colorado District Court for Water Division No. 7 all disputes over whether waters are being used in accordance with the terms of this section, provided that disputes involving solely Tribal members or lessees of the Tribes over the use of water within the Tribes' canal distribution system may be resolved in a Tribal forum.

Notwithstanding anything in this section to the contrary, the Tribes' responsibilities for the maintenance and repair of United States Bureau of Reclamation Project facilities and reporting obligations for project waters shall remain identical to that of other project water users.

Nothing in this section shall commit or obligate the United States to expend funds which have not been appropriated and budgeted. Nothing in this section shall commit or obligate the State to expend funds which have not been appropriated and budgeted.

C. DAMS AND RESERVOIR SAFETY

The Tribes agree to construct, maintain and operate existing or future storage reservoirs, together with inlet, outlet, and spillway structures or other necessary water works facilities in a manner which will protect downstream persons and property. The Tribes agree to inspect such dams using qualified, experienced personnel as often as appropriate for the protection of public health and safety and agree to allow state inspection of the dam and storage reservoirs for the purpose of ensuring public health and safety. The Tribes agree to cooperate with the State Engineer to ensure that dams and reservoirs remain safe and do not endanger public health and safety. In the event either finds that a dam or reservoir is unsafe and presents an immediate danger to public health and safety, the Tribes and the State Engineer agree to cooperate and to take all necessary actions to prevent the danger to public health and safety and to render the structure safe. Disputes over conditions of such reservoirs and the need for other remedial actions shall be decided by a court of competent jurisdiction.

Nothing in this provision shall be construed to alter the federal dam safety program.

Nothing in this section shall commit or obligate the United States to expend funds which have not been appropriated and budgeted. Nothing in this section shall commit or obligate the State to expend funds which have not been appropriated and budgeted.

D. INDIVIDUAL DOMESTIC AND LIVESTOCK WELLS

The Tribes agree to provide the State Engineer with the following information in a Tribal permit 30 days before the Tribes intend to permit the drilling of a well for individual domestic or livestock purposes as set forth in Article III, Section C, subsection 2: the aquifer or, if the aquifer is unknown, the depth from which the water is proposed to be withdrawn, the location of the proposed well, the name of the owner of the land on which the well will be located, the estimated average annual amount of water applied for in acre-feet, and the estimated maximum pumping rate in gallons per minute. Thirty (30) days after the receipt of a Tribal permit to drill a well, the State shall issue well permits for individual domestic and livestock wells with the parameters and up to the amounts specified in Article III, Section C, subsection 2.

The parties shall present to the Colorado District Court for Water Division No. 7 all disputes arising under this section.

Nothing in this section shall commit or obligate the United States to expend funds which have not been appropriated and budgeted. Nothing in this section shall commit or obligate the State to expend funds which have not been appropriated and budgeted.

E. AQUIFER PROTECTION AND WATER WELL AND PUMP INSTALLATION

The Tribes agree to drill, maintain, and/or abandon wells in a manner consistent with public health and safety and applicable laws or regulations. Well completion reports and well drilling logs shall be completed and filed with the State Engineer within 30 days of completion of the well.

Disputes arising under this section shall be decided by a court of competent jurisdiction.

Nothing in this section shall commit or obligate the United States to expend funds which have not been appropriated and budgeted. Nothing in this section shall commit or obligate the State to expend funds which have not been appropriated and budgeted.

F. CHANGE OF RESERVED WATER RIGHT

1. Change of Non-project Reserved Water Rights

The Tribes may change their non-project reserved water rights from the types of use, places of use, amounts, times of use or location of points of diversion set forth in Article III, Section A, subsection 3 and Article III, Section B, subsection 3 of this Agreement. No change shall be allowed unless the Tribes and the United States first file an application for a change of water rights in the Colorado District Court for Water Division No. 7 and the court grants such change. Changes of water rights may be to any beneficial use.

A change of water right shall be granted by the district court if the change does not increase the Tribe's consumptive use or injure other water rights. In determining the consumptive use of Tribal water rights and injury to other water rights for the change of a water right within the boundaries of a reservation or from within the boundaries to outside the boundaries of a reservation, the Tribes shall be deemed, notwithstanding the provisions of Article V, Section B, a., to have historically diverted and beneficially used their water in the full amounts, in the manner and for the purposes set forth in Article III, Section A, subsection 3 and Article III, Section B, subsection 3. For subsequent changes of water rights, once a water right has been changed from within the boundaries to outside the boundaries of a reservation, consumptive use shall be determined based upon actual historic use.

The Tribes and the United States further agree that for a change of a surface diversion of agricultural irrigation water to a ground water diversion, they will provide the State Engineer with a Tribal permit containing the following information before the Tribes file an application for a change of water right in Colorado District Court for Water Division No. 7: the aquifer or, if the aquifer is unknown, depth from which the water is proposed to be withdrawn, the location of the proposed well, the name of the owner of the land on which the well will be located, the estimated average annual amount of water applied for in acre-feet, the estimated maximum pumping rate in gallons per minute, the proposed use, and a description of the land proposed to be irrigated or the use to which the water will be put and the location of that use. Within thirty (30) days after receipt of a Tribal permit to drill a well, the State Engineer shall issue a well permit for the proposed well if the change does not increase the Tribe's consumptive use or injure other water users. In determining the consumptive use of water and injury to other water users, the Tribes shall be deemed to have diverted and beneficially used their water in the full amounts, and manner, and for the purposes contemplated by this Agreement.

For changes of water rights which contemplate that the water rights defined herein or water under those rights may be used outside the boundaries of the Reservations, the parties shall be bound by Article V, Section B.

The parties shall present to the Colorado District Court for Water Division No. 7 all disputes arising under this section.

Nothing in this section shall commit or obligate the United States to expend funds which have not been appropriated and budgeted. Nothing in this section shall commit or obligate the State to expend funds which have not been appropriated and budgeted.

2. Change of Project Reserved Water Rights

The Tribes and the United States may change their project reserved water rights from the types of use, places of use, amounts, times of use or location of points of diversion set forth in Article III, Section A, subsections 1 and 2 and Article III, Section B, subsection 1 of this Agreement. No change shall be allowed unless the Tribes and the United States file, to the same extent other project water users are required to file, an application for a change of water rights in the Colorado District Court for Water Division No. 7 and the court grants such change. Changes of water rights may be to any beneficial use.

The change of water right shall be granted by the district court if the change does not increase the Tribe's consumptive use or injure other water rights. In determining the consumptive use of project reserved water rights and injury to other water rights, the provisions of Article III, Section A, subsection 1.d. and 2.d. and Article III, Section B, subsection 1.d shall govern, notwithstanding the provisions of Article V, Section B, a.

For changes of water rights which contemplate that the water rights defined herein or water under those rights may be used outside the boundaries of the Reservations, the parties shall be bound by Article V, Section B.

The parties shall present to the Colorado District Court for Water Division No. 7 all disputes arising under this section.

Nothing in this section shall commit or obligate the United States to expend funds which have not been appropriated and budgeted. Nothing in this section shall commit or obligate the State to expend funds which have not been appropriated and budgeted.

G. STATE ADJUDICATED WATER RIGHTS

The parties acknowledge that the administrative provisions of this Article govern the Tribes' use of the project and non-project reserved water rights recognized herein, but that any and all other waters appropriated by the Tribes pursuant to the state adjudication or permitting process will be decreed, administered and regulated by the State pursuant to existing state law.

The State shall administer all rights to the use of surface or ground water within or outside the Reservation which are not a part of the Tribes' reserved water rights. The District Court for Water Division No. 7 shall have exclusive jurisdiction to resolve all disputes over uses of nonreserved water rights established under state law.

V. LEASING AND OFF-RESERVATION USE

A. LEASING

Pursuant to the legislation required by Article VI, Section A, subsections 1.a. and 1.c of this Agreement, the Tribes may, subject to the Federal legislation required by Article VI, Section A, subsection 1.b. of this Agreement, sell, exchange, lease, or otherwise temporarily dispose of their water within or, subject to Section B below, outside the boundaries of the Reservations.

B. WATER USE OUTSIDE THE BOUNDARIES OF THE RESERVATIONS

Solely as a compromise for the purposes of this settlement, the parties agree that the Tribes may, under this Agreement, use the project and non-project reserved water rights secured to the Tribes by this Agreement outside the boundaries of their reservations:

a. within the State subject only to the same requirements and conditions of:

(i) State law;

(ii) Federal law, excluding the doctrine of Indian reserved water rights and Federal reclamation law; and

(iii) interstate compacts

as apply to the exercise of water rights held by non-federal, non-Indian entities and

b. outside the State to the extent permitted by any:

(i) State law;

(ii) Federal law;

(iii) interstate compact; or

(iv) international treaty

that pertains to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation or quality of those waters; provided, however, that nothing in this Agreement shall be construed to establish, address, or prejudice whether, or the extent to which, or to prevent any party from litigating whether, or the extent to which, any of the aforementioned laws do or do not permit, govern or apply to the use of the Tribes' water outside the State.

VI. FINALITY OF SETTLEMENT

A. JUDICIAL APPROVAL

On or before August 31, 1987, or such other date upon which the State, the Tribes and the United States shall mutually agree, the parties shall present to the Colorado District Court for Water Division No. 7 a proposed stipulation reflecting the terms of this Agreement, which shall not be implemented until the entry of the Final Consent Decree.

Nothing in this final agreement or consent decree shall be construed as an enlargement of the subject matter jurisdiction of the District Court for Water Division No. 7. Article IV Section C, Article VI Sections A.1, A.2, and B, and Article VII Section G shall be excluded from the proposed stipulation to be presented to the District Court for Water Division No. 7; provided that any waiver of tribal water right claims contained within Article VI Section A.1.e. shall be included in such proposed stipulation. Such exclusion shall not delete or alter the terms or the effect of the excluded sections of the Agreement.

Upon the submission of such proposed stipulation the parties shall request the Court to give appropriate notice and hold the necessary hearings to consider and rule upon any objections to the proposed stipulation submitted. Upon the entry of a Final Consent Decree as provided below reflecting the proposed stipulation, the Tribes, and the United States as trustee for the Tribes, shall waive any and all claims to water rights within the State of Colorado not expressly identified in the Final Consent Decree, established by existing state or federal court decree, or otherwise recognized under state law, including any and all claims to water rights or injury to water rights, for the benefit of the Tribes or any individual claiming the right to use water under the Tribes, from any source of surface water or waters tributary thereto, arising under any laws of the United States or of the State. The Final Consent Decree shall not be executed or become final until the State, the Tribes, and the United States jointly certify that the legislative enactments necessary to implement this Agreement, as enumerated below, have been obtained to their satisfaction.

Execution and entry of the Final Consent Decree shall be contingent upon the enactment of the legislation described below.

1. Congressional Legislation

Required enactment by the Congress shall consist of legislation that:

a. provides relief from the prohibition of 25 U.S.C. 177;

b. provides that:

(i) the repayment of the construction costs allocable to the Tribes' municipal and industrial water allocation from the Dolores and Animas-La Plata Projects shall be deferred, and interest thereon shall not accrue, until the water is used;

(ii) the United States is authorized to bear the reimbursable OM&R costs allocable to the Tribes' municipal and industrial water allocation from the Dolores and Animas-La Plata Projects until the water is used; and

(iii) the United States is authorized to bear the reimbursable OM&R costs allocable to the Tribes' agricultural irrigation water allocation from the Animas-La Plata Project until the water is used.

As an increment of water is leased or otherwise used, prospective repayment of that increment's pro rata share of the allocable costs shall commence.

c. assures that the Tribes and their lessees are not restricted by application of federal reclamation laws from using, selling, exchanging, leasing or otherwise temporarily disposing of their water;

d. authorizes and appropriates the federal share of the $60.5 million Tribal Development Fund provided for in Article VI, Section B below;

e. provides that performance by the United States of the actions required by the aforementioned legislative provisions will be conditioned on the Tribes executing waivers and releases of all claims concerning water rights whether in rem or against any party to this Agreement other than those which may arise under the terms of this Agreement;

provided that the waivers of such claims, if any, relative to the Animas and La Plata Rivers shall not be effective until Phase I of the Animas-La Plata Project as defined in the June 30, 1986 Binding Agreement for Animas-La Plata Project Cost-Sharing, is complete or the Tribes elect to retain their project reserved water rights as described in Article III, Section A, subsection 2.f(ii) or Article III, Section B, subsection 1.f(ii); except that waivers of such claims, if any, for monetary damages against the State shall be effective as soon as the State appropriates and disburses the funds described in Article VI, Section A, subsection 2;

provided further that the waivers of such claims relative to the Mancos River shall not be effective until the combined Highline-Towaoc Canal is completed so as to enable the delivery of water to the Ute Mountain Ute Indian Reservation, or the Ute Mountain Ute Tribe elects to exercise the project reserved water right by taking the Tribe's allocation of water directly from McPhee Reservoir; except that waivers of such claims, if any, for monetary damages against the State shall be effective as soon as the State appropriates the funds described in Article VI, Section A, subsection 2;

provided further that in the event that either Tribe obtains a judgment for monetary damages against the United States, the State, or any other parties, the United States or the State or the affected party shall be entitled to apply as an offset against the judgment the money actually provided by that party to the Tribe as Tribal Development Funds and any interest or any other moneys generated by this fund under this Agreement and its implementing legislation;

provided further that nothing in this paragraph e. shall be deemed to create or give validity to any claim by the Tribes against the United States, the State, or any other parties to this settlement, or in any way constitute an acknowledgment of the validity of any claims by the Tribes against the United States, the State, or any other party to the settlement;

provided further that neither Tribe may assert any claim against the United States, the State or any other party arising out of:

(i) the negotiation of this Agreement;

(ii) the adoption of the specific terms of this Agreement; or

(iii) allegations concerning the lack of authority of either Tribe or the other parties to enter into this Agreement.

f. authorizes the Tribes, to waive the claims referred to in the preceding paragraph; and

g. provides that, in exercising his authority to administer water rights on the Reservations, the Secretary, on behalf of the United States, is authorized and directed to comply with the administrative procedures governing the water rights confirmed in this Agreement to the extent provided in Article IV.

The parties contemplate that other enactments, as mutually agreed upon and needed but not enumerated herein, may be drafted by the parties and proposed to the Congress.

2. Colorado General Assembly Legislation

Required enactments by the Colorado General Assembly shall consist of legislation that:

a. authorizes and appropriates $5 million to be deposited by the State to the Tribal Development Funds no later than 30 days following the deposit of the first installment of federal monies to said Development Funds.

b. authorizes such amount as needed, estimated at $6 million, to be expended by the State for construction of the Towaoc Pipeline and a domestic water distribution system for the Ute Mountain Ute Tribe as a credit to the Ute Mountain Ute Development Fund, with said construction to be initiated within 1 year of the execution of this Final Settlement Agreement, and completed within 1 year of the initiation of construction; and

c. authorizes and appropriates $5.6 million to be provided by the State to the Secretary for Ridges Basin Dam on a schedule acceptable to the State and the Secretary beginning in the first year of construction of said dam.

B. TRIBAL DEVELOPMENT FUNDS

Tribal Development Funds shall be established for the Tribes, with $20.0 million for the Southern Ute Indian Tribe and $40.5 million for the Ute Mountain Ute Indian Tribe, said funds to be created as follows:

1. $5.0 million to be deposited by the State, contingent upon appropriation by the Colorado General Assembly, to the Tribal Development Funds no later than 30 days following the deposit of the first installment of Federal monies to said Devel-

opment Funds.

2. Such amount as needed, estimated at $6.0 million, to be expended by the State for construction of the Towaoc Pipeline and a domestic water distribution system for the Ute Mountain Ute Indian Tribe as a credit to the Ute Mountain Ute Development Fund. Said construction will be initiated within one year of the execution of this Agreement, and shall be completed within one year of the initiation of construction.

3. $49.5 million to be provided by the Secretary, contingent upon appropriations, to the Tribal Development Funds in three annual installments beginning in the first year for which the Congress of the United States appropriates such monies, as follows: $19.5 million in year 1; $15 million in year 2; and $15 million in year 3. The Secretary will annually deposit any appropriated monies to the Development Funds within 30 days following the availability of such annual appropriation by the Congress to the Secretary.

4. The Tribal Development Funds shall be allocated between the Tribes as provided for in the following table.

Development Fund Allocations

(Millions of Dollars)

	Year 1	Year 2	Year 3	Total
Ute Mtn Ute				
Federal	12.0	10	10	32.0
State	2.5	-	-	2.5
Towaoc Pipeline	6.0	-	-	6.0
Subtotal	20.5	10	10	40.5
Southern Ute				
Federal	7.5	5	5	17.5
State	2.5	-	-	2.5
Subtotal	10.0	5	5	20.0
TOTAL	30.5	15	15	60.5

C. REMEDIES IN THE EVENT CONTINGENCIES ARE NOT MET

1. Confirmation by the Colorado District Court for Water Division No. 7.

In the event that the Colorado District Court for Water Division No. 7 fails to recognize the water rights described in Article III of this Agreement, or otherwise departs in any material way from implementing the substance of the proposed stipulation, either Tribe or the United States shall have the opportunity to void this Agreement in its entirety upon 60 days' notice to the Attorney General of the State. On the same grounds the Colorado Attorney General may void the Agreement upon 60 days' notice to the United States Attorney General and the chairmen of both Tribes. On the same grounds other parties materially and adversely affected by a change in the substance of the decree entered by the court shall have the opportunity to void this Agreement insofar as this Agreement affects their interest, upon 60 days notice to the State, the Tribes and the United States.

Notice shall be made as follows: To the United States, through the Secretary of the Interior and the Attorney General; to the Tribes, through the respective Tribal Chairmen; to the State, through the Attorney General; to all other parties, through their respective offices.

2. Enactment of Necessary Legislation

In the event necessary legislation, or any part thereof, is not enacted by the end of the 100th Congress, or such other date upon which the parties shall mutually agree, the United States, either Tribe or the State shall have the right to void this Agreement in its entirety upon 60 days' notice. On the same grounds other parties materially and adversely affected by a change in the substance of the necessary legislation shall have the opportunity to void this Agreement insofar as this Agreement affects their interest, upon 60 days notice to the State, the Tribes, the United States and all other parties. Notice shall be made as follows: To the United States, through the Secretary of the Interior and the Attorney General; to the Tribes, through the respective Tribal Chairmen; to the State, through the Attorney General; to all other parties, through their respective offices.

VII. GENERAL PROVISIONS

A. Nothing in this Agreement shall be deemed:

1. To preclude the Tribes or their members, or the United States on its own behalf or on behalf of the Tribe or tribal members, from seeking additional water rights by appropriation in accordance with and pursuant to state law or from acquiring existing state law water rights by purchase, relinquishment, or other operation of law.

2. To limit in any way the rights of the parties or any other person to litigate any issues or questions not resolved by this agreement.

3. To authorize the taking of a water right which is vested under State or Federal law other than as prescribed by Section C of this Article.

4. To alter the effect of any subordination agreement pertaining to relative priorities of water rights previously entered into between or among the United States and/or either Tribe and any other water user.

B. The parties expressly reserve all rights not granted, recognized, or relinquished in this Agreement.

C. Whenever a reserved water right is recognized herein for use on a parcel of tribal land that is already irrigated under an existing state decreed right owned by the Tribe, individual tribal members, or by the United States for the benefit of the Tribe or individual tribal members, the state decreed right shall be deemed relinquished unless otherwise expressly agreed.

D. The agreement contained herein has been arrived at in the process of good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceeding other than one for approval or interpretation of this Agreement pursuant to or following the entry of a Final Consent Decree.

E. The law of the State relating to abandonment shall not apply to any of the project or non-project reserved water rights recognized in this Agreement, even if used or temporarily disposed of by the Tribes outside the boundaries of their reservations, nor shall those reserved water rights be forfeited or lost under state law by nonuse.

F. The Secretary agrees not to request assignment of the Dolores Water Conservancy District's water rights pursuant to article V(c) of Contract 7-07-40-W0470, dated September 23, 1977, as amended February 25, 1986, unless the District should undertake some action that would jeopardize the project or the government's right of repayment.

G. To the extent permitted by existing law, the United States Bureau of Reclamation shall give preference to the Tribes to design and/or construct Dolores or Animas-La Plata Project facilities, so long as the implementation of such preference does not detrimentally affect the project construction schedule.

H. This Agreement may only be modified with the joint consent of the parties.

I. This Agreement may be executed in any number of counterparts, all of which together shall constitute one original Agreement.

J. Any entitlement to water of any individual member of the Tribes shall be satisfied from the water rights confirmed in this Agreement.

K. Nothing in this Agreement shall commit or obligate the United States to expend funds which have not been appropriated and budgeted.

L. Nothing in this Agreement shall commit or obligate the State to expend funds which have not been appropriated and budgeted.

This Agreement is effective this _______ day of December, 1986.

COLORADO UTE INDIAN WATER RIGHTS
FINAL SETTLEMENT AGREEMENT
Signature Page

Dated this 10th day of December, 1986

STATE OF COLORADO

By ------------------------------------
RICHARD D. LAMM, Governor

By Duane Woodard
DUANE WOODARD, Attorney General

COLORADO UTE INDIAN WATER RIGHTS

FINAL SETTLEMENT AGREEMENT

Signature Page

Dated this 10 day of December, 1986

UTE MOUNTAIN UTE INDIAN TRIBE

By Ernest House Sr.
ERNEST HOUSE, SR., Chairman

COLORADO UTE INDIAN WATER RIGHTS
FINAL SETTLEMENT AGREEMENT
Signature Page

Dated this 10th day of December, 1986

SOUTHERN UTE INDIAN TRIBE

By Chris A. Baker
CHRIS A. BAKER, Chairman

By Clement J. Frost
CLEMENT J. FROST, Vice-Chairman

By Leonard C. Burch
LEONARD C. BURCH, Council Member

By Orian L. Box
ORIAN BOX, Council Member

By Vida B. Peabody
VIDA B. PEABODY, Council Member

By Guy Pinnecoose Jr
GUY PINNECOOSE, JR., Council Member

By Lillian I. Seibel
LILLIAN I. SEIBEL, Council Member

COLORADO UTE INDIAN WATER RIGHTS
FINAL SETTLEMENT AGREEMENT
Signature Page

Dated this 10 day of December, 1986

UNITED STATES DEPARTMENT OF THE INTERIOR

By ______________________________

COLORADO UTE INDIAN WATER RIGHTS
FINAL SETTLEMENT AGREEMENT
Signature Page

Dated this 10th day of December, 1986

UNITED STATES DEPARTMENT OF JUSTICE

By ------------------------------

COLORADO UTE INDIAN WATER RIGHTS

FINAL SETTLEMENT AGREEMENT

Signature Page

Dated this 10 day of December, 1986

ANIMAS-LA PLATA WATER CONSERVANCY DISTRICT

By John E. Murphy
JOHN MURPHY, President

Attest: (Seal)

By Edward T. Searle
EDWARD T. SEARLE, Secretary

COLORADO UTE INDIAN WATER RIGHTS
FINAL SETTLEMENT AGREEMENT
Signature Page

Dated this 10th day of December, 1986

DOLORES WATER CONSERVANCY DISTRICT

By Bruce C. McAfee
BRUCE C. McAFEE, President

Attest: (Seal)

By David D Herrick
DAVID D. HERRICK, Secretary

COLORADO UTE INDIAN WATER RIGHTS
FINAL SETTLEMENT AGREEMENT
Signature Page

Dated this 15th day of December, 1986

FLORIDA WATER CONSERVANCY DISTRICT

By Loyd N. Hess
LOYD N. HESS, President

Attest: (Seal)

By Terry Palmer
TERRY PALMER, Secretary

COLORADO UTE INDIAN WATER RIGHTS
FINAL SETTLEMENT AGREEMENT
Signature Page

Dated this 10th day of December, 1986

MANCOS WATER CONSERVANCY DISTRICT

By Thomas K. Colbert
THOMAS K. COLBERT, President

Attest: (Seal)

By Roland Kalyandes
Secretary

COLORADO UTE INDIAN WATER RIGHTS
FINAL SETTLEMENT AGREEMENT
Signature Page

Dated this 10th day of December, 1986

SOUTHWESTERN WATER CONSERVATION DISTRICT

By Frederick V. Kroeger
FREDERICK V. KROEGER, President

Attest: (Seal)

By Edward T. Searle
EDWARD T. SEARLE, Secretary - Acting

COLORADO UTE INDIAN WATER RIGHTS
FINAL SETTLEMENT AGREEMENT
Signature Page

Dated this 3rd day of February, 1987

CITY OF DURANGO

By ______________________________
LEONEL SILVA, Mayor

Attest: (Seal)

By Pauline M. Redman
PAULINE REDMAN, City Clerk

COLORADO UTE INDIAN WATER RIGHTS
FINAL SETTLEMENT AGREEMENT
Signature Page

Dated this 9th day of January, 1987

TOWN OF PAGOSA SPRINGS

By ------------------------------------
ROSS ARAGON, Mayor

By Jacquelyn M. Schick
JACQUELYNE M. SCHICK
Town Clerk

COLORADO UTE INDIAN WATER RIGHTS
FINAL SETTLEMENT AGREEMENT
Signature Page

Dated this 18th day of December, 1986

FLORIDA FARMERS DITCH COMPANY

By James W. Cole
JAMES COLE, President

Attest: (Seal)

By Hazel Brown
HAZEL BROWN, Secretary

COLORADO UTE INDIAN WATER RIGHTS
FINAL SETTLEMENT AGREEMENT
Signature Page

Dated this 18th day of December, 1986

FLORIDA CANAL COMPANY

By Richard C Ballantine
RICHARD BALLANTINE, President

Attest: (Seal)

By T. G. Eggleston
T. G. EGGLESTON, Secretary

COLORADO UTE INDIAN WATER RIGHTS
FINAL SETTLEMENT AGREEMENT
Signature Page

Dated this ~~13th~~ 10th day of ~~November~~ DECEMBER, 1986

FAIRFIELD COMMUNITIES, INC.

By Terry L. Flora
TERRY L. FLORA,
Senior Vice President

Attest: (Seal)

By Eddie Ruth Ewing
EDDIE RUTH EWING,
Secretary

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August 26, 1987

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Denver Field Office
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1961 Stout Street
Denver, CO 80294

Re: Colorado Ute Indian Water Rights Final Settlement Agreement-Extension of Time

Dear John, Dan and Lois:

Article VI, Section A of the above Agreement requires the parties to the Agreement to present to the Colorado District Court for Water Division 7, a proposed Stipulation reflecting the terms of the Agreement by August 31, 1987. That date may be modified by agreement of the State, the Tribes, and the United States. The purpose of this letter is to extend until January 15. 1988 the presentation to the Colorado District Court of the proposed Stipulation. Please indicate your acceptance of this extension by signing below.

Sincerely,

Scott B. McElroy
Southern Ute Indian Tribe

Dated: 8/27/87

State of Colorado

Dated: 8/27/87

Daniel Israel

Ute Mountain Ute Indian Tribe

Dated: August 28, 1987

John P. Lange

United States of America

SBM/ps

cc: Sam Maynes
David Robbins

STATEMENT OF THE HONORABLE ROY ROMER
GOVERNOR OF THE STATE OF COLORADO

Before the

SELECT COMMITTEE ON INDIAN AFFAIRS

and the

WATER AND POWER SUBCOMMITTEE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

Concerning

S. 1415
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987

Washington, D.C.
December 3, 1987

Introduction

The Colorado Ute Indian Water Rights Final Settlement Agreement ("Agreement") of December 10, 1986, was entered into by the Southern Ute Indian Tribe, Ute Mountain Ute Indian Tribe, United States, State of Colorado, and ten other entities representing water users in southwestern Colorado. It is the culmination of two years of intensive negotiations by the signatories thereto.

The reserved water rights claims of the two Tribes would have disrupted the established economy of the non-Indian water users in southwestern Colorado had they been litigated. Instead, we have achieved through compromise and accommodation a lasting and equitable settlement of the Tribes' claims which does not harm non-Indian interests.

I cannot emphasize to you enough the extraordinary working relationships between Indian and non-Indian neighbors in southwestern Colorado. There is a strong community of interest among all of our citizens which is exemplified by the results of these negotiations. By any standard, an historic agreement has been achieved.

As you consider this settlement and the required implementing legislation, I would emphasize the unique nature of each Indian reserved water rights situation. It is important to recognize that the factual, economic, and social circumstances surrounding a settlement will vary from Tribe to Tribe and state to state. If Congress is to encourage negotiated settlements rather than years of expensive and divisive litigation, then it should endorse the principle that negotiated settlements will be treated on a case-by-case basis and will not be viewed as setting precedents for other negotiations.

The Western Governors Association has recognized this to be the case. A policy statement adopted at our meeting this summer, copy attached, notes that we governors:

> ... recognize the legitimate concerns that people distant from negotiations may feel regarding the implications of provisions in that settlement for other situations. However, each negotiated Indian water rights settlement will be unique, carefully tailored to the parties who are directly affected, and may be totally inappropriate to any and all other situations. Because of overarching historic, moral, and economic imperatives, we urge all concerned parties, especially those in Congress, to treat settlements as case-by-case, exceptional arrangements which could be perceived as possible models for related situations but which are not binding legal precedents. In addition, where significant disputes exist as to application of existing laws or programs within the context of particular settlements, Congress might consider a clause which expressly reserves the right to dispute these issues as an alternative to withholding consideration or approval. Without such general, flexible approaches, no state will be able to have the disputes within its borders fully resolved.

I urge Congress to adopt this same point of view in acting on S. 1415 and any other settlement legislation which may come before you. If a case-by-case approach is not taken, all settlements will become hopelessly bogged down in unnecessary fears and the attendant political opposition. Individual treatment of individual settlements is the only chance we have to avoid litigation.

Final Settlement Agreement

The United States filed applications for reserved water rights for the Tribes in 1976 in Colorado District Court for Water Division No. 7. The Colorado court has jurisdiction to adjudicate these claims pursuant to the McCarren Amendment.

It is this litigation which the Agreement will bring to a negotiated settlement. In essence, what the parties have done is agree on the decree which they will ask the Colorado court to enter, which decree will quantify the Tribes' reserved water rights and define the terms and conditions of their use and administration.

The Agreement is a lengthy and meticulous document. A summary of it is appended to this statement. The full Agreement has been submitted separately for the record.

The Agreement provides a comprehensive settlement of the Tribes' claims for water which will enable the economic development of their reservations. It has six major components:

(1) The Tribes will receive specified amounts of water from the Animas-La Plata and Dolores Projects and additional rights to certain quantities of water from various streams which pass through their reservations.

(2) The manner in which these water rights will be used and administered is prescribed.

(3) In exchange for these water rights, the Tribes will waive all of their reserved rights claims and any claims which they may have against the United States for breach of trust in the United States' capacity as the Tribes' trustee.

(4) $60.5 million will be placed in development funds for the Tribes to enable them to develop their water resources and to otherwise make their reservations economically self-sufficient.

(5) Non-federal parties will contribute money to the financing of the settlement in two regards:

  (a) For the financing of the Animas-La Plata Project, and

  (b) For the tribal development funds.

(6) Repayment of certain of the costs of the Dolores and Animas-La Plata Projects which are allocable to the Tribes will be deferred, and the Tribes' share of operation and maintenance costs will be borne by the United States, until the Tribes put their water to use.

Purpose of S. 1415

Federal legislation is required to implement selected provisions of the Agreement. That is why S. 1415 has been introduced. An identical bill, H.R. 2642, has also been introduced in the Senate. Attorney General Woodard's statement provides details about what the bill does.

Let me simply note that the proposed amendments to the bill which have been agreed to with the Departments of the Interior and Justice, and to which the Attorney General will address himself, have my support. With these changes, we are pleased to have the support of the Administration for this legislation.

Financial Aspects of the Settlement

Non-federal financial contributions to the settlement take two forms: (1) up-front financing for the Animas-La Plata Project, which project will provide a sizeable portion of the Tribes' water, and (2) payments by the State of Colorado to tribal development funds. A tabular summary of the non-federal financing is attached hereto.

With respect to the Animas-La Plata Project, non-federal financing is being provided pursuant to the requirements of the Supplemental Appropriations Act of 1985 (Chapter IV, P.L. 99-98, "Department of the Interior, Bureau of Reclamation, Construction Program," 99 Stat. 293). The cost sharing agreement for which that legislation calls was entered into on June 30, 1986, with the Department of the Interior (copy attached).

Federal budgetary outlays for the Animas-La Plata Project have been reduced by 39 percent relative to what would have been required had the project been built entirely at federal expense as authorized by Congress. These reductions are accomplished through cash contributions by non-federal parties in the amount of $68 million towards the construction of the first phase of the project's facilities and through non-federal parties assuming responsibility for the $133 million construction cost of all of the second phase of the project's facilities.

With respect to payments to the Tribes, the Agreement calls for $11 million to be provided by the State of Colorado towards the $60.5 million tribal development funds. $6 million of this will be provided via construction by the state of a pipeline which will deliver the Ute Mountain Ute Tribe's domestic water supply from the Dolores Project to its reservation. The remaining $5 million will be paid in cash to the tribal development funds.

Colorado has already met nearly all of its obligations. The State's contribution to the Animas-La Plata Project has already been appropriated to the Colorado Water Resources and Power Development Authority. The Authority is in the process of negotiating an escrow agreement with the Bureau of Reclamation for the transfer of those funds. With respect to the pipeline from the Dolores Project to the Ute Mountain Ute Reservation, the Colorado Water Conservation Board has already completed the design and engineering of that project. We expect to go to construction shortly. Finally, the $5 million cash contribution to the tribal development funds has already been appropriated by the Colorado General Assembly and will be available on July 1, 1988.

CRSP Power Revenues

Section 6(g) of the bill implements a provision of the June 30, 1986, Animas-La Plata Project cost sharing agreement which was insisted upon by the Department of the Interior. This has proved to be a controversial provision.

The construction costs of the Animas-La Plata Project allocable to irrigation which are beyond the ability of the farmers to repay are repaid to the federal government from the revenues generated by the sale of hydroelectric power produced at the Colorado River Storage Project (CRSP) storage units. The CRSP Act provides that such costs be repaid within 50 years, but it does not require any particular repayment schedule.

Under current procedures, repayment of such costs would not be made until the final few years of the maximum 50 year repayment period. Section 6(g) of the bill would change this practice for this one project by specifying that repayment be made over 30 years in equal annual installments. This has been characterized as "straight line amortization," in contrast to the current practice of "balloon payments" at the end of the authorized 50 year repayment period.

The requirement of section 6(g) can be met without having to increase the rate charged to those who purchase CRSP power. The Western Area Power Administration has confirmed this fact in a February 27, 1987, letter to us (copy attached).

I am aware of the concerns of public power customers, including many CRSP power customers who are located in Colorado, about this provision. However, I believe that this provision is a fair and reasonable one limited as it is to this settlement, this project, and the specific circumstances at hand. It is required by an agreement which we have made. We stand by it.

Animas-La Plata Project

The Animas-La Plata Project, a participating project of the Colorado River Storage Project, is a linchpin of the settlement. It, along with the Dolores Project, are the only means by which the Tribes can receive substantial amounts of water without disrupting the established non-Indian economies in southwestern Colorado. Furthermore, construction of the project will partially fulfill the agreement reached in the 1968 Colorado River Basin Project Act between the Upper and Lower Basins. Section 501 (b) of that Act calls for the project to be constructed "...concurrently with the construction of the Central Arizona Project, to the end that such... [project] shall be completed not later than the first delivery of water from said Central Arizona Project...." Deliveries to the Central Arizona Project have, of course, already commenced.

The project is important to the economic well-being of Indians and non-Indians alike. It is a project which will strike an appropriate balance between economic development on the one hand and preservation of our fish and wildlife resources on the other hand given the proper mitigation of the project's impacts.

It is, in short, the essential ingredient of a workable settlement, one which benefits Indians and non-Indians alike. When coupled with the non-federal financial contributions to the project, we believe that we have created an unparalleled opportunity for the United States to discharge its trustee responsibilities.

/gl

Western Governors' Association
Resolution 1987

July 7, 1987
Snowbird, Utah

SPONSOR: Governor Sullivan
SUBJECT: Indian Water Rights

A. BACKGROUND

1. Water is essential to the economy and lifestyle of the West, on and off Indian reservations. For over eighty years, the federal government has allowed an untenable conflict to develop over reserved Indian water rights by encouraging non-Indian water development and by neglecting Indian water development. Indians, whose rights are generally senior to those of most non-Indians, have been deprived of gains in economic well-being which could come from being able to put the water to which they have rights to beneficial use. Non-Indians, who have made investments in good faith to put the water to which they have rights to beneficial use, now may face the loss of their investment and livelihood to senior Indian rights.

2. Over 50 disputes are currently in litigation. As has happened in many instances, litigation may cost millions of dollars, take decades to resolve, cause enormous disruption in the interim, and/or result in loss of rights or the awarding of paper rights which are useless without investment in the structures needed to store and deliver the water. The possibility of litigation clouds non-Indian rights, prevents development based on the rights in question, and causes hostile discussion between Indian and non-Indian neighbors.

3. Negotiated settlement of the water rights disputes provides a flexible process for resolving disputes. It can allow each of the parties involved to meet some or all of their major concerns. It allows for unique and creative arrangements to meet as many of the parties' concerns as possible. It secures commitment from all the parties to take action and provide the funding to implement the agreed-upon plan, according to an agreed-upon time schedule.

   In general, the agreement will maximize economic benefits by allowing reservations to progress towards becoming viable, self-sustaining communities; by protecting the investments of the non-Indians in their water use; and by maintaining state and federal revenues resulting from the productive use of the water. In addition it allows the federal government to fulfill its trustee obligations to the tribes and avoid payment of damages for breach of trust responsibility or of claims for compensation for lost rights from non-Indians.

4. The western governors have participated with representatives of business (the Western Regional Council) and Indians (the National Congress of American Indians, Native American Rights Fund, and Council of Energy Resource Tribes) in the Ad Hoc Group on Reserved Indian Water Rights. The group was established in 1982 to promote negotiated settlement of Indian water rights disputes. The group has pinpointed several general problems which threaten any and all attempts to resolve these disputes:

   - o A sustained level of commitment by the Department of the Interior as well as other parties to the negotiations process. A high level commitment and consistent framework for negotiating is needed so that growing trust, progress on specifics, and confidence in the outcome can be maintained in the face of changing administrations, individuals within the Department, or representatives during negotiations.

   - o A reliable commitment of funding to implement settlements, once reached. Most settlements will require funds to construct the facilities to deliver water to the reservations or other parties to the agreement. Because of the federal responsibility in these disputes, the federal government will generally be a significant, although not sole, source of necessary financing. Parties to the disputes recognize that budgetary limits may constrain immediate implementation. However, a reliable source of funding needs to be established so that once agreements are made within those constraints, schedules and commitments are kept.

   - o Approval of the settlements by Congress. Most settlements require ratification and/or appropriation of funds by Congress. Because of their complexity, settlements often require unique provisions which may be exceptions to normal practice. If these exceptions are interpreted as a permanent or expressly authorized change in practice or as a precedent for other situations, and therefore approval of the settlements is withheld, it is unlikely any settlement will be able to be both reached and enacted.

B. GOVERNORS' POLICY STATEMENT

1. Assuring the certainty of water rights through settlement of Indian water rights disputes is important to facilitate economic growth both on and off reservations. Fulfillment of Indian treaties and satisfaction of Indian water rights is a uniquely federal responsibility assumed under the

United States Constitution and through a course of dealings manifested in treaties, federal statutes, and executive orders. It is inequitable either to ignore such responsibilities or, by neglect, to cast the burden of fulfilling them upon the western states.

2. In general, negotiated settlements are preferable to litigation. The U.S. Department of the Interior, which serves as trustee for the tribes, should firmly commit to a process of negotiations, including enunciating such a policy; establishing guidelines for federal participation; providing technical and financial assistance to the tribes; maintaining trained negotiating teams with authority to speak for and commit the Administration; identifying sources of financing; providing high level Department commitment to work out joint agreement to proposals with the Department of Justice and Office of Management and Budget; and assisting with support for the settlements before the Congress.

3. To the extent that expenditures are necessary to implement negotiated settlements, the federal government should assume a large part of the financial burden. A reliable source of funds is needed for resolution of Indian reserved water rights claims consistent with the established water uses of non-Indians.

   The Department of the Interior, Office of Management and Budget, and members of Congress should work with states, tribes, and other parties to the settlements to facilitate the provisions of funds to implement settlements.

4. We recognize the legitimate concerns that people distant from negotiations may feel regarding the implications of provisions in that settlement for other situations. However, each negotiated Indian water rights settlement will be unique, carefully tailored to the parties who are directly affected, and may be totally inappropriate to any and all other situations. Because of overarching historic, moral, and economic imperatives, we urge all concerned parties, especially those in the Congress, to treat settlements as case-by-case, exceptional arrangements which could be perceived as possible models for related situations but which are not binding legal precedents. In addition, where significant disputes exist as to application of existing laws or programs within the context of particular settlements, Congress might consider a clause which expressly reserves the right to dispute these issues as an alternative to withholding consideration or approval. Without such general, flexible approaches, no state will be able to have the disputes within its borders fully resolved.

5. In sum, we see the following as essential elements of a policy favoring negotiated Indian water rights settlements:

- o The settlements should be voluntary and consensual.
- o The federal government should be willing to make a fair and just contribution.
- o The settlements should be compatible with conditions in the state and locality.
- o Because each situation is unique, the settlements should not follow any set formula. They should be creative and tailored to meet the facts and circumstances of each situation.
- o Experience derived from successful settlements may assist in negotiating others but no settlement package should be seen for another.

C. GOVERNORS' MANAGEMENT DIRECTIVE

1. We reaffirm the participation of the Western Governors' Association in the activities of the Ad Hoc Group on Reserved Indian Water Rights.

2. We direct the WGA staff under the guidance of WGA's lead governor for Indian water rights to continue to work towards facilitating negotiated settlements.

3. We request that this resolution be sent to members of the Administration, especially within the Department of the Interior, members of appropriate congressional committees, and members of the western congressional delegation.

Summary of the
Colorado Ute Indian Water Rights
Final Settlement Agreement of December 10, 1986

The Agreement consists of seven articles: general purposes, definitions, quantification and determination, administration, leasing and off-reservation use, finality of settlement, and general provisions.

Article I - General Purposes

This article provides a brief introduction to the document and sets out its general purposes which are: (1) the settlement of existing disputes or future controversies concerning the Tribes' right to beneficially use water in southwest Colorado; (2) the settlement of the litigation filed by the United States on behalf of the Tribes in the Colorado District Court for Water Division No. 7; (3) the enhancement of the Tribes' opportunities to derive an economic benefit from the use of their reserved water rights; (4) the enhancement of the Tribes' ability to meet their repayment obligations under the Agreement; and (5) the authorization for the Tribes to sell, exchange, lease or otherwise temporarily dispose of their water.

Article II - Definitions

This article includes the Agreement's glossary of terms.

Article III - Quantification and Determination

Under the terms of the Agreement, the Ute Mountain Ute Indian Tribe will receive the right to beneficially use 25,100 acre-feet of water from the Dolores Project, 33, 000 acre-feet of water from the Animas-La Plata Project, and 27,400 acre-feet of water from the three streams flowing through the reservation. The Southern Ute Indian Tribe will receive the right to beneficially use 29,900 acre-feet of water from the Animas-La Plata Project and over 10,000 acre-feet of water from various other water sources serving the reservation. Both Tribes will receive underground water for individual domestic and livestock uses and will have their current water uses protected.

The water rights secured to the Tribe by the Agreement are called "project reserved waters" or "non-project reserved waters," with the exception of water from the Pine River and a state water right decreed to the Southern Ute Tribe from the existing Florida Water Conservancy Project (these rights are taken as nonreserved water rights or are taken pursuant to earlier decrees). All project and nonproject reserved water rights are subject to the provisions of the Agreement concerning administration (article IV), leasing and off-reservation use (article V), finality (article VI), and general provisions (article VII).

The Agreement identifies specific places of use, times of use, types of use and, to varying degrees, consumptive uses. Stream quantifications were done in a manner which gave the Tribes surplus waters, or waters not yet decreed to or used by existing state appropriators. Dispute concerning the use of these waters will be presented to the Colorado District Court for Water Division No. 7.

The construction of the Animas-La Plata Project and the completion of the irrigation facilities of the Dolores Project are keystones to the water rights settlement because without this additional storage and supply, there is insufficient water to meet the future needs of the Tribes and the current demands of the non-Indian communities. Non-Indian user populations in southwest Colorado and northwest New Mexico receiving benefits from the Animas-La Plata Project have committed to help finance the project. On June 30, 1986, their cost-share commitments were found by the Secretary of the Interior to meet the cost-share requirements set out by Congress in Section IV of Public Law 99-88.

Article IV - Administration

The article governs all project and nonproject reserved water rights used within the boundaries of the reservation. Off-reservation use of the waters is governed by Article V of the

Agreement. The Agreement provides for joint State-Tribal administration of the water rights confirmed to the Tribes. It subjects the on-reservation use of Tribal waters to the requirements of change in water rights proceedings, beneficial use and resolution of disputes in Colorado District Court for Water Division No. 7.

Article V - Leasing and Off-Reservation Use

Subsection A concerns not only leasing but also the sale, exchange or temporary disposal of Tribal waters. The subsection's sole purpose is to overcome the restrictions of the Indian Non-Intercourse Act by allowing the Tribes to temporarily transfer title of their water to third parties. Subsection B addresses the off-reservation use of Tribal waters. It discusses two types of off-reservation use: (1) off-reservation and in-state use; and (2) off-reservation and out-of-state use. For the off-reservation and in-state use of reserved water, the Tribes agree to comply with all of the state laws, federal laws and interstate compacts that other non-Indian water users must comply with. For off-reservation and out-of-state use, the parties agree that the Tribes can use their water to the extent permitted by state law, federal law, interstate compacts, and international treaties, as these treaties pertain to the appropriation, use, development, storage, regulation, allocation, conservation, exportation or quality of the water of the Colorado River and its tributaries.

Article VI - Finality of Settlement

This article describes the process of finalizing the Agreement. In 1987 the parties will present a proposed stipulation reflecting the terms of the Agreement to the Colorado District Court for Water District No. 7. The water court will then give notice and hold the appropriate hearings to rule on objections to the stipulation. The parties will request that the court not enter a final consent decree until the Tribes, the State and the United States jointly certify that the federal and state legislative enactments necessary to implement the Agreement have been obtained.

Even after the Agreement is made final and entered as a judgment of the court, the parties have agreed that the Tribe's water right and breach of trust claims on the Mancos, Animas, and La Plata Rivers can be revived if the Dolores project (for the Mancos River) or the Animas-La Plata Project (for the Animas and La Plata Rivers) is not completed.

Pursuant to the agreement, necessary enactments by Congress include: Waiver of the Non-Intercourse Act; project construction costs deferrals; project operation, maintenance and repair cost deferrals; waiver of federal reclamation law; authorization and appropriation of $49.5 million for the Tribal Development Funds; waiver of the Tribal water right claims (provided that the waiver of the claims relative to the Animas and La Plata Rivers are not final until the Animas-La Plata Project is constructed and the waiver of the claims relative to the Mancos River are not effective until the combined Highland-Towaoc Canal is constructed); and a directive to the Secretary of the Interior to comply with the administrative article.

Necessary Colorado legislative enactments include: Authorization and appropriation of $5 million to the Tribal Development Fund; authorization of the amount necessary to complete the Towaoc pipeline and domestic water distribution system; and authorization and appropriation of $5.6 million for the construction of project facilities. The Colorado General Assembly has already authorized the money necessary for the construction of the Towaoc pipeline and domestic water distribution system.

Article VI - General Provisions

The last article of this document includes miscellaneous agreements. The State agrees that the Tribes can seek additional water rights in accordance with state law; the parties reserve the right to litigate any questions not resolved by this Agreement; the parties agree that the law of abandonment will not be applied to Tribal water rights; the parties expressly reserve all rights not granted or recognized in the Agreement; the Tribes agree that if a reserved water right is recognized in this document for use on a parcel of land already irrigated under a state decree, the state decreed water right will be relinquished; the parties agree that offers or compromises made in the course of negotiation of the document can not be construed as admissions against interests or be used in any legal proceeding other one for approval and interpretation of the Agreement; the Secretary of the Interior agrees not to request reassignment of the Dolores

Water Conservancy District's water rights pursuant to their contract with the district; the Bureau of Reclamation agrees to give preference to the Tribes to design or construct the Dolores or Animas-La Plata Projects in accordance with the law; and the United States and the state disclaim any interpretation in the Agreement which can be read to commit or obligate them to expand funds which have not been appropriated or budgeted.

COLORADO UTE INDIAN WATER RIGHTS FINAL SETTLEMENT AGREEMENT AND ANIMAS-LA PLATA PROJECT COST SHARING BINDING AGREEMENT

		$ in millions (Oct. 1985, prices
I.	TOTAL COST OF SETTLEMENT	
	A. Animas-La Plata Proj. (excl. of IDC)	$509.3
	B. Interim A-LP Project facilities (i.e., N. Mex. irrigation facilities)	3.0
	C. Tribal development funds	60.5
	TOTAL COST	$572.8
II.	NON-FEDERAL FINANCING OF SETTLEMENT	
	A. Cash for A-LP Project--Phase 1	
	1. Escrow account (CWR&PDA)	$ 42.4
	2. Local cash contributions	.125
	3. Revenue bond in 11th year	7.3
	4. San Juan Co. ad valorem taxes	12.8
	5. Colo. cash contribution	5.6
	SUB-TOTAL	$ 68.2
	B. Phase 2 of A-LP Project	
	1. S. Ute Reservoir	$ 53.5
	2. 11,980 acres of UMU & 10,765 acres of Colo. full service irrigation	67.6
	3. 1,900 acres of N. Mex. full service irrigation	11.9
	SUB-TOTAL	$133.0
	C. Tribal development funds	
	1. Colorado cash contributions	$ 5.0
	2. Towaoc pipeline distribution system	6.0
	SUB-TOTAL	$ 11.0
	TOTAL REDUCTION IN FEDERAL OUTLAYS	$212.2
III.	FEDERAL FINANCING OF SETTLEMENT	
	A. Animas-La Plata Project	$311.1
	B. Tribal Development Funds	49.5
	TOTAL FEDERAL OUTLAYS	$360.6

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NOTES

I. Total Cost of Settlement

A. Animas-La Plata Project--The estimated cost, exclusive of interest during construction (IDC), of the project as planned by the Bureau of Reclamation is $509.3 million ($529.8M total cost minus $20.5 interest during construction = $509.3M) in October, 1985, price levels.

B. New Mexico Interim Irrigation Facilities--$3 million covers the cost of interim water delivery facilities made necessary by the staging of Southern Ute Dam.

C. Tribal Development Funds--A $20 million fund for the Southern Ute Tribe and a $40.5 million fund for the Ute Mountain Ute Tribe.

II. Non-federal Financing of Settlement

A. Cash for Animas-La Plata Project--Phase 1

1. $42.4 million represents the purchasing value of the $30 million to be placed in escrow by the Colorado Water Resources and Power Development Authority. The $42.4 million is calculated assuming an annual inflation rate of 4.5% with earnings of compound interest at 8% per annum until the principal and accrued interest in the escrow account are exhausted, which is expected to be in about the seventh or eighth year of the 12-year construction period. Money from the escrow account will be used at the rate of 20% of each year's required construction expenditures for Phase 1 facilities.

2. Local cash contributions of $0.125 million will be as follows: Animas-La Plata Water Conservancy District, $5,000 per year during the construction period for a total of $75,000; and Montezuma County, $50,000 in a lump sum at the start of construction.

3. Revenue bonding by the Animas-La Plata Water Conservancy District (or the City of Durango or the Colorado Water Resources and Power Development Authority) will provide $7.3 million to be paid in a lump sum prior to the year in which the non-Indian M&I water allocated to

Colorado is available from the project (projected to be the 11th year of construction).

4. San Juan County, New Mexico, through an ad valorem tax levy of 3 mills per year, will contribute $12.8 million during the construction of Phase 1 facilities.

5. $5.6 million of cash will be made available by Colorado, contingent upon appropriations by the Colorado General Assembly, for the construction of Ridges Basin Dam and shall be credited against the allocable costs of the non-Indian M&I water allocated to Colorado.

B. Phase 2 of Animas-La Plata Project

1. Through staging of the construction of Southern Ute Reservoir, to be financed and constructed by non-Federal entities, the cost of the project to the Federal government is reduced by $53.5 million: $48 million for the dam and inlet canal and $5.5 million for specific recreation and wildlife mitigation features at the reservoir.

2. By staging the construction of irrigation facilities for 10,765 acres of full service non-Indian lands under the Dry Side Canal in Colorado and for 11,980 acres of Ute Mountain Ute full service lands, to be financed and constructed by non-federal entities, there will be a reduction of $67.6 million in the outlay of Federal funds.

3. By staging the construction of irrigation facilities for 1,900 acres of full service non-Indian lands in New Mexico, including the irrigation canal, to be financed and constructed by non-federal entities, there will be a reduction of $11.9 million in the outlay of federal funds.

C. Towaoc Pipeline/Distribution System

1. $5.0 million will be made available by Colorado to the Tribal Development Funds, to be deposited within 30 days following the deposit of the first installment of federal monies in the funds. The $5.0 million has been appropriated and will become available July 1, 1988.

2. The Towaoc pipeline and domestic water distribution system for the Ute Mountain Ute Tribe will be constructed at the expense of the State of Colorado as a credit toward the tribe's

development fund. The $6 million has been appropriated by the Colorado General Assembly and design of the project is already underway.

III. Federal Financing of Settlement

A. Animas-La Plata Project (October, 1985, price levels allocated by project purposes)

M&I*

Colorado non-Indian	$ 2.978M
Colorado Indian	38.799
Navajo Tribe	3.153
NM non-Indian	0
	$ 44.930M

Irrigation**	$235.308M
Non-reimbursable functions***	$ 30.860M
TOTAL	$311.098M

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* Repayable by M&I water users

** Sources of repayment (Oct., 1985, price levels):

Pre-payments	$ .634M
Ad valorem taxes	27.817
Irrigators	21.174
CRSP power revenues	185.683
TOTAL	$235.308M

***Recreation, fish and wildlife, and cultural resources

B. Tribal Development Funds

Of the $60.5M for the two tribal development funds, $49.5M is to be provided by the federal government, contingent upon appropriations by Congress. The final settlement agreement calls for this sum to be paid in three annual installments of $19.5M, $15M, and $15M.

CWCB
9/14/87

AGREEMENT IN PRINCIPLE
CONCERNING THE
COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT
AND
BINDING AGREEMENT FOR
ANIMAS-LA PLATA PROJECT COST SHARING

INTRODUCTION

The United States, the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, and certain non-Indian water users have reached an agreement in principle: (i) concerning the quantification, determination, and settlement of the reserved water rights claims of the Tribes; and (ii) providing for the uniform and cooperative administration of those rights. The final water rights settlement agreement will include the provision of water to the Tribes from the Dolores Project and Animas-La Plata Project and the determination of water rights of the Tribes to various streams in southwest Colorado. On March 14, 1986, an Agreement in Principle was entered into among the numerous non-Federal entities setting forth a comprehensive settlement and quantification of these reserved water rights claims. A final settlement agreement clarifying the March 14, 1986, Agreement in Principle (including a confirmation that the water rights to be secured to the Tribes by the settlement are in recognition and fulfillment of the reserved water rights claims of the Tribes) and implementing the provisions of this agreement in principle shall be executed by the non-Federal entities and the United States on or before July 31, 1986.

The United States, the State of Colorado, certain political subdivisions of the States of Colorado and New Mexico, the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe have also reached and they hereby set forth a binding agreement for the cost-sharing and financing of the Animas-La Plata Project in satisfaction of the requirement of Congress in Chapter IV of Public Law 99-88 "Department of the Interior, Bureau of Reclamation, Construction Program" (99 Stat. 293, at pp. 319-320). The non-Federal entities state that they are capable of and willing to participate in project cost-sharing and financing in accordance with the terms of this agreement. The Secretary of the Interior hereby determines that the non-Federal entities' financing plan demonstrates a reasonable likelihood of the non-Federal interests' ability to satisfy the terms and conditions of this agreement as set forth herein.

This Animas-La Plata Project cost-sharing agreement is an integral part of, and is contingent upon, a final settlement of the litigation filed in Colorado District Court for Water Division No. 7 for the quantification of the reserved water right claims of the Southern Ute and Ute Mountain Ute Indian Tribes in the State of Colorado.

WATER RIGHTS SETTLEMENT

The final water rights settlement agreement will provide for, among other things, the following:

1. A consent decree to be prepared by the Colorado parties, the United States and the Tribes providing for a comprehensive quantification and determination of the reserved water right claims of the Tribes and providing for the uniform and cooperative administration of the decreed waters. This consent decree shall be submitted for approval by the District Court for Water Division No. 7, State of Colorado, and duly approved by the court on terms agreeable to the parties. Entry of a final decree shall be contingent upon enactment of legislation which:

a. Authorizes the Tribes, pursuant to the requirements of 25 U.S.C. 177, to lease or temporarily dispose of water to the extent otherwise permitted by applicable Federal and State law, interstate water compacts, and treaties.

b. Provides for deferral, without interest, of the repayment costs allocable to municipal and industrial water supplies, including operation and maintenance costs, allocated to the Tribes from the Dolores and Animas-La Plata Projects. As an increment of water is leased or otherwise used, repayment of that increment's prorata share of the allocable costs shall commence.

c. Assures that the Tribes are not restricted by application of federal Reclamation laws from using and/or leasing waters allocated to the Tribes from the Dolores and Animas-La Plata Projects.

d. Authorizes appropriation of the federal share of the $60.5 million Tribal Development Fund provided for in the settlement.

e. Provides that performance by the United States of the actions required by the aforementioned legislative provisions will be conditioned on the Tribes executing a waiver and release of all claims concerning water rights whether *in rem* or against any party to the settlement other than those which may arise under the terms of the settlement.

The parties contemplate that other enactments, as needed but not enumerated herein, will be drafted by the parties and proposed to the Congress.

2. The creation of Tribal Development Funds for the Tribes, with $20.0 million for the Southern Ute Tribe and $40.5 million for the Ute Mountain Ute Tribe, said funds to be created as follows:

a. $5.0 million to be deposited by the State of Colorado, contingent upon appropriation by the Colorado General Assembly, to the Tribal Development Funds no later than 30 days following the deposit of the first installment of Federal monies to said Development Funds.

b. Such amount as needed, estimated at $6.0 million, to be expended by the State of Colorado for construction of the Towaoc pipeline and domestic water distribution system for the Ute Mountain Ute Tribe as a credit to the Ute Mountain Ute Development Fund. Said construction will be initiated within one year of the execution of the final settlement agreement, and shall be completed within one year of the initiation of construction.

c. $49.5 million to be provided by the Secretary to the Tribal Development Funds in three annual installments beginning in the first year for which the Congress of the United States appropriates such monies, as follows: $19.5 million in year 1; $15 million in year 2; and $15 million in year 3. The Secretary will annually deposit such monies to the Development Funds within 30 days following the availability of such annual appropriation by the Congress to the Secretary.

In consideration for the Ute Mountain Ute Tribe's agreement to accept delayed payment of the Federal contribution to its Tribal Development Fund, the Secretary of the Interior, the State of Colorado, and the Ute Mountain Ute Tribe shall use their best efforts to acquire for the Ute Mountain Ute Tribe, for recreation purposes, not less than 100 acres of land with access to McPhee Reservoir of the Dolores Project from lands which had been recently transferred from the Department of the Interior to the Department of Agriculture.

3. Appropriate finality provisions to protect Federal, Tribal, and State interests in the settlement.

ANIMAS-LA PLATA COST SHARING AGREEMENT

Cost sharing and financing of the Animas-La Plata Project shall be as follows:

1. The facilities of the project, or mutually acceptable alternatives, shall be constructed in two phases as identified below:

Phase One Facilities

Ridges Basin Dam and Reservoir
Durango Pumping Plant
Ridges Basin Inlet Conduit
Ridges Basin Pumping Plant and Transmission Facilities
Long Hollow Tunnel
Durango Municipal and Industrial Pipeline
Shenandoah Pipeline
Recreation, Fish and Wildlife and Cultural Resources Phase One
Dry Side Canal Phase One
Operation and Maintenance Facilities Phase One
Southern Ute Inlet (partial)
Southern Ute Diversion Dam
Red Mesa Pumping Plant, Laterals and Transmission Facilities
Alkali Gulch Laterals Phase One
La Plata New Mexico Laterals Phase One
Dry Side Laterals Phase One
Drains Phase One
New Mexico Interim Facilities

Phase Two Facilities

Southern Ute Dam and Reservoir
Southern Ute Inlet (partial)
New Mexico Irrigation Canal
Ute Mountain Ute Pumping Plant, Laterals, and Transmission Facilities
Drains Phase Two
Recreation, Fish and Wildlife and Cultural Resources Phase Two
Dry Side Canal Phase Two
Alkali Gulch Laterals Phase Two
Alkali Gulch Pumping Plant and and Transmission Facilities
Dry Side Laterals Phase Two
La Plata New Mexico Laterals Phase Two
Operation and Maintenance Facilities Phase Two
Southern Ute Pumping Plant, Laterals, and Transmission Facilities
Third Terrace Pumping Plant and Transmisssion Facilities
La Plata Diversion Dam

Contingent upon appropriations by the Congress, Phase One facilities shall be constructed by the Bureau of Reclamation within a period of not less than 12 years from the date of this agreement. Phase Two facilities will be constructed by one or more of the non-federal entities signatory to this agreement on such schedules as they deem practicable.

2. As part of their non-federal contributions, the non-Federal entities agree to non-federally finance the Phase Two facilities listed above. Until the completion of Phase Two facilities, this phasing of facilities has the effect of making the Southern Ute Tribe's municipal and industrial water and the Ute Mountain Ute Tribe's municipal and industrial and irrigation water available at Ridges Basin Reservoir. In addition, it has the effect of deferring the irrigation of 10,700 acres of full service land in Colorado and the irrigation of 1,900 acres of full service land in New Mexico.

3. Construction of Phase One facilities will be financed as follows:

a. $30 million contribution to be deposited by the Colorado Water Resources and Power Development Authority, less the amount not to exceed $75,000 to be spent by the Authority for the surface geology survey in 1986, into an escrow account within 30 days following the initiation of irreversible construction or preconstruction activities by the Secretary for the development of Phase One of the Animas-La Plata Project. Escrow funds, including interest earned thereon, will be available on demand by the Secretary to fund no more than twenty percent of the total estimated Phase One development costs in any year.

b. $7.3 million to be provided by the Animas-La Plata Water Conservancy District in a lump-sum payment to the Secretary no later than September 30 of the year prior to the year in which the Secretary declares that municipal and industrial water is expected to be available to non-Indian beneficiaries in Colorado. Allocable costs in excess of $7.3 million attributable to inflation will be repayable pursuant to a repayment contract between the Secretary and the District with such escalation for inflation of materials and labor costs not to exceed 30 percent. Escalation of overhead costs will be treated in accordance with paragraph 6 below.

c. $75,000 to be provided by the Animas-La Plata Water Conservancy District in payments of $5,000 per year, payable on or before October 1 of each year, commencing the first year the Secretary expends funds for the Animas-La Plata Project.

d. $50,000 to be provided by Montezuma County to the Secretary in a lump-sum payment within 30 days following initiation of irreversible construction activities by the Secretary for Phase One.

e. An estimated $12.8 million, to be provided by the San Juan Water Commission through the agency of San Juan County, will be available to the Secretary to fund the estimated annual cost of developing the New Mexico non-Indian municipal and industrial water share of the Phase One facilities, such funds to be provided on a schedule of applicable actual costs related to New Mexico municipal and industrial water facilities. Allocable costs in excess of $12.8 million attributable to inflation will be repayable pursuant to a repayment contract between the Secretary and the San Juan Water Commission with such escalation for inflation of materials and labor costs not to exceed 30 percent. Escalation of overhead costs will be treated in accordance with paragraph 6 below.

f. $5.6 million to be provided by the State of Colorado, contingent upon appropriations by the Colorado General Assembly, to the Secretary for Ridges Basin Dam. Such funds shall be provided on a schedule acceptable to Colorado and the Secretary beginning in the first year of construction of said dam.

g. All other funds needed to satisfactorily complete construction of the Phase One facilities shall be provided by the United States, contingent upon appropriations by the Congress.

4. No expenditure of federal funds by the Secretary will be made for irreversible construction actions or activities in the development of the Animas-La Plata Project prior to passage of the legislation enumerated in Paragraph One under the heading Water Rights Settlement and prior to implementation of 30-year straight-line repayment of those costs of the Animas-La Plata Project to be repaid by Colorado River Storage Project power revenues.

5. Repayment contracts must be executed by Indian and non-Indian beneficiaries of the Animas-La Plata Project with the Secretary of the Interior for repayment of the reimbursable costs of the project. In determining the reimbursable costs of the Project, the financial contributions of the non-federal entities to the construction of Phase One facilities shall be credited to the allocable costs of each project function as follows:

Function	Amount ($ millions)
New Mexico Non-Indian Municipal and Industrial	$ 12.8
Colorado Non-Indian Municipal and Industrial	$ 12.9
Colorado Non-Indian Irrigation	$ 37.625

6. The repayment contracts will include provisions to recover any escalation of construction costs for Phase One facilities. In negotiating the escalation provisions, consideration will be given to fixing overhead costs charged to the Animas-La Plata Project by the Secretary.

7. All operation, maintenance and replacement costs not deferred under legislation will be borne by the non-Federal entities under the provisions of repayment contracts, subject to applicable Reclamation Law.

8. Any use of water other than that contemplated in the Final Environmental Impact Statement for the Animas-La Plata Project shall be subject to compliance with the National Environmental Policy Act.

Dated this 30th day of June, 1986.

This contract may be executed in any number of counterparts, all of which together shall constitute one original agreement.

IN WITNESS THEREOF, the parties hereto have caused this agreement to be executed as of the date first above written by their respective officers and representatives, and warrants that each is duly authorized by the respective entity to execute this agreement which shall bind the parties hereto, their successors and assigns.

For the State of Colorado

Duane Woodard
For the State of Colorado

For the Colorado Water Resources
and Power Development Authority

Chris A. Baker
For the Southern Ute Indian Tribe

John E Murphy
For the Animas-La Plata Water
Conservancy District

For the Ute Mountain Ute Indian
Tribe

For the New Mexico Interstate
Stream Commission

For the San Juan Water Commission

For Montezuma County

For the Secretary of the Interior

Department Of Energy
Western Area Power Administration
P.O. Box 11606
Salt Lake City, Utah 84147

RECEIVED
MAR 2 1987
COLORADO WATER CONSERVATION BOARD

FEB 27 1987

Mr. J. William McDonald
Director
Colorado Water Conservancy Board
1313 Sherman Street
Denver, CO 80203

Dear Mr. McDonald:

This is in response to the questions you posed to the Western Area Power Administration regarding the impact of various repayment scenarios on Colorado River Storage Project (CRSP) ratepayers. The basis of the comparison is the existing 1985 repayment formulation which includes Animas-LaPlata, scheduled to come on line in 2004-2011. The repayment model is programmed to pay for the facility in the years 2053-2060 because the facility is noninterest bearing and, under the conventional criteria, repayment is postponed until the later years of its financial life. In the base case there are no non-Federal participants and the power user's liability for Animas-LaPlata is $398 million. The rate calculated is 9.92 mills per kWh with these assumptions.

The alternatives to the basic case are analyzed using a straightline annual amortization schedule for Animas-LaPlata with the first payment taking place in 2004. Three time periods are examined which are 30, 40, and 50 years. In these cases there is non-Federal participation which reduces the power user's liability for Animas-LaPlata to $195 million. The results of the calculations show that there is no significant impact on the basic rate from any of the alternative assumptions.

The results are not those normally expected to occur. With increasing time periods for repayment it is expected that mill rates would fall. In moving the repayment nearer to the present, one would expect that mill rates would go up. Neither happened because of the unique conditions of timing and relative facility size. Three items can be identified which all contribute to the moderation of the expected impacts of the changed assumptions on power rates.

First, the costs attributable to Animas-LaPlata represent about 6.25 percent of total system costs and, while they are a significant fraction of the costs, do not overwhelm the rate.

Second, there exists sufficient time separation between Animas-LaPlata and later facilities so that project revenues can be used to reduce appreciably the outstanding debt on existing structures before repayment of newer debts must be undertaken.

Third, a feature of the Central Utah Project is controlling the rate determination with the result that the repayment study can accomodate the Animas-LaPlata without any rate impact.

The first item simply reduces the magnitude of the rate change because the portion of total system cost represented by Animas-LaPlata is small. If Animas-LaPlata were a much more costly facility it would have a greater impact on the CRSP mill rate.

Items two and three both revolve around time periods between facilities which provide enough breathing room so that facility costs do not build on each other and thereby establish a "new" controlling feature. A delay as short as 5 years in Animas-LaPlata operations would change the repayment conditions and likely cause an increase in the mill rate to customers. In addition to timing, item three also involves a very unique system designed to repay facilities in the CRSP by calculating a revenue requirement for projects. Established in law, each state in the basin has a preset percentage assignment of revenue for repayment of participating facilities in its boundaries. The revenue requirement needed from CRSP is computed based on each state's individual revenue requirement divided by that state's percentage allocation. The largest individual state revenue requirement from the computation for all four states becomes the controlling revenue requirement which will meet the project costs in the four states. If the percentage assignment of the state is low, then this causes a large rise in the revenue requirement from the project which then controls the mill rate. Conversely, if a higher percentage factor is controlling calculations it results in a lower rise in the revenue requirement. (Example: A $100,000 revenue requirement needed by Colorado (46 percent) results in a total requirement for all four states of $217,000 while an identical state requirement for New Mexico (17 percent) will result in a total requirement of $588,235.) In any event, new or changed facilities which do not alter the revenue requirement will fit within project mill rates which is the case with Animas-LaPlata.

While this special case of Animas-LaPlata shows no rate changes for power users, it should not be inferred that these results are applicable anywhere outside the CRSP. The provisions of the Colorado River Storage Act cause the results found here. Even at that, small changes in facility timing could make appreciable changes in the rates especially if the facilities start building on each other.

Sincerely,

Lloyd Greiner

Lloyd Greiner
Area Manager

STATEMENT
presented to the
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
on
S. 1415
A Bill to Facilitate and Implement the Settlement of Colorado
Ute Indian Reserved Water Rights Claims in Southwest Colorado
and for Other Purposes
by
S. E. Reynolds
New Mexico State Engineer
December 3, 1987

My name is S. E. Reynolds. I am New Mexico State Engineer and ex officio Secretary of the New Mexico Interstate Stream Commission. My statement is presented on behalf of the State of New Mexico with the approval of Governor Garrey Carruthers.

Public Law 90-537, enacted on September 30, 1968, authorized the Central Arizona Project and also the Animas-La Plata Project along with other Upper Colorado River Basin projects. The Act accommodated the interests of all seven of the Colorado River Basin states after decades of controversy, litigation and negotiation. I am confident that the witnesses here today representing the other Colorado River Basin states will acknowledge the accord that led to the enactment of the legislation authorizing the Central Arizona Project.

Section 501(b) of the Act directs the Secretary to proceed as nearly as practicable with the construction of the Animas-La Plata participating project concurrently with the construction of the Central Arizona Project to the end that the former shall be completed not later than the date of the first delivery of water from the Central Arizona Project.

The first delivery of water from the Central Arizona Project was made in March of 1985; obviously the goal of Section 501(b) cannot be met. Some delay in the initiation of construction of the Animas-La Plata Project was justified for the reason that the Bureau's definite plan report required substantial change in the project configuration. Whether or not the construction of the Animas-La Plata Project could have been completed in the timely manner contemplated by Congress is now moot. But Section 501(b) is an element of the 1968 accord among the Colorado River Basin states insisted upon by Congressman Wayne Aspinall of Colorado to make clear the federal commitment to implement the seven-state consensus.

The Bureau of Reclamation's definite plan report shows that the Animas-La Plata Project would be capable of furnishing a water supply of 14,200 acre-feet annually for 4,530 acres of full-service lands and 3,760 acres of supplemental service lands within the La Plata Conservancy District near Farmington, New Mexico. The Project could also furnish 900 acre-feet of water annually for 380 full-service acres on that portion of the Ute Mountain Ute Indian Reservation within New Mexico.

The Project would also be capable of furnishing 38,400 acre-feet of water annually for municipal and industrial use in San Juan County, New Mexico, for the municipalities of Farmington, Aztec, Bloomfield, rural communities adjacent to those cities and for Shiprock, the latter a town on the Navajo Indian Reservation in New Mexico.

The Bureau of Reclamation's definite plan report shows that the Animas-La Plata Project would be capable of supplying 198,200 acre-feet of water annually for use in Colorado and New Mexico; of that amount 53,500 acre-feet, or 27 per cent, would serve New Mexico facilities. The Animas-La Plata Project water supply for New Mexico would result in the beneficial consumptive use of about 34,100 acre-feet of New Mexico's apportionment under the Upper Colorado River Basin Compact of 1948. The Secretary of the Interior has acquired, pursuant to State law, the water rights needed for the New Mexico portion of the Project. The rights have a May 1, 1956, priority date.

By the enactment of Public Law 99-88 in August of 1985, Congress profoundly altered the "rules of the game" that had been set by earlier federal legislation. The 1985 act provided that none of the funds it appropriated could be expended to undertake construction of the Animas-La Plata Project, except under terms and conditions acceptable to the Secretary of the Interior as set forth in a binding, cost-sharing and financing agreement.

Presumably, the objective of the 1985 Act was to hold down the federal budget deficit, an objective which we all must share. The people of New Mexico understand that the federal government's financial status has changed since 1968, when the Animas-La Plata Project was authorized.

A part of the strategy of Public Law 99-88 was to test whether the project beneficiaries truly believe the project is worthwhile. The Animas-La Plata Project beneficiaries have met that test. By a Joint Powers Agreement under State law, the cities of Aztec, Bloomfield and Farmington, San Juan County and the San Juan Rural Water Users Association have agreed upon an allocation of the water to be made available by the Animas-La Plata Project and an ad valorem tax sufficient to finance, during the construction of the Animas-La Plata Project, the cost allocable to a municipal, industrial water supply of 30,800 acre-feet. That cost is estimated to be $12.8 million.

The New Mexico Interstate Stream Commission, upon which I serve as Secretary, agreed to the deferral of facilities required for the irrigation of 1900 acres of full-service land in New Mexico and the construction of those works by one or more non-federal entities on such schedule as those entities deem practicable. The cost thus deferred has been estimated at $9 million.

The effect of the June 30, 1986, "Agreement in Principle Concerning the Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas-La Plata Project Cost-sharing" that was approved by the Secretary of the Interior, is to reduce the construction cost to be financed by the United States, at October 1985 prices, from $512 million to $311 million. That reduction in the federal cost-sharing burden was effected by the non-federal entities in New Mexico and Colorado committing to pay up-front $68 million of the construction cost and agreeing to the deferral of construction of project works costing $133 million until non-federal entities deem it practicable to finance the work.

Enactment of S. 1415 and construction of the Animas-La Plata Project are needed to implement the negotiated settlement of the

Colorado Ute Indian Tribes reserved water rights claims. That negotiated settlement is consistent with the Justice Department's current vigorous efforts to negotiate, rather than litigate, Indian water rights claims.

If the bill is not enacted, ill-will and expensive, protracted litigation would be fostered. The outcome of litigation is uncertain, but ultimately could require facilities or payments more costly than the federal share of the Animas-La Plata Project to meet the United States trust obligation to the Colorado Ute Tribes.

I understand that Section 5 of the bill as introduced, which would authorize the use of tribal water rights off the tribes' reservations, may be troublesome to some of the Colorado River Basin states. In the course of the negotiation of the June 1986 binding agreement for Animas-La Plata Project cost-sharing and financing, the New Mexico Interstate Stream Commission agreed to not oppose Congressional action exempting the Southern Ute and Ute Mountain Ute Indian Tribes from the restrictions of the Non-Intercourse Act (25 USC 177) as those restrictions relate to the sale or lease of water for use off their respective reservations; provided that an agreement for financing and cost-sharing for the Animas-La Plata Project was executed pursuant to Public Law 99-88. I believe our concession on the point is not prejudicial to New Mexico's interests; and that is still our position.

On behalf of New Mexico I urge this distinguished Committee's favorable consideration of S. 1415; and I thank you for the opportunity to present this statement.

STATEMENT OF ERNEST HOUSE, CHAIRMAN, UTE MOUNTAIN UTE INDIAN TRIBE IN SUPPORT OF S.B. 1415

I. SUMMARY OF TESTIMONY

The purpose of my statement is to seek congressional approval of S.B. 1415. S.B. 1415 is required to implement the December 10, 1986 Colorado Ute Indian Water Rights Settlement Agreement (the "Agreement") entered into by the United States, the State of Colorado, the State of New Mexico, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, and a large group of local water users in Southwest, Colorado (the "Agreement").

The Agreement is historic in three ways. First, it resolves a long standing clash between Indian and state water rights owners which if not settled and litigated would have unquestionably "closed down" several farming communities in Southwest, Colorado and Northwestern, New Mexico. Second, it creates a rare opportunity for an isolated, rural, and very beautiful portion of the West to generate an economy that will prevent a permanent loss of population and hope. In the absence of this Agreement which is designed to utilize the region's principal economic resource -- namely the unappropriated waters of the Colorado River -- this rural area like other isolated areas in the West will suffer from stagnation and widespread emigration. Third, the Agreement represents a significant technical accomplishment of integrating complex State and federal law, water resources, and administration. The Agreement is entitled to the full support of the United States Congress.

II. THE BACKGROUND

This Agreement ends a 100 year conflict between two Ute Indian Tribes and their non-Indian neighbors. In 1868, the United States set aside large portions of Southwest, Colorado as permanent reservations for the Ute Indians. Those reservations encompassed federal Winter's Doctrine federal reserved water rights to nearly all of the streams and rivers which flow out of the San Juan Mountains into the Colorado River system.

During the last ten years the United States, the State of Colorado, the local water users, and the two Indian Tribes began to prepare for what would certainly be time consuming and injurious court litigation to resolve once and for all the scope of the Ute Indians' federal reserved rights vis a vis the competing state water rights relied upon by the non-Indian communities. Worried that inevitably big losers would emerge from such litigation, the Attorney General of the State of Colorado proposed in April of 1985 that the parties make one last run at achieving a negotiated settlement. As a result of that invitation, an intensive two years of negotiations generated the final Agreement of December 10, 1986 signed not only by the Tribes, the State of Colorado, and local water users, but also by the United States Department of Justice, and United States Department of Interior.

III. SUMMARY OF THE AGREEMENT

First and foremost the Agreement quantifies the Tribes' reserved water rights from available streams and rivers passing through the Reservations and from the partially completed Dolores Project as well as the yet to be constructed Animas-La Plata Project. The Tribes are provided with significant amounts of water for irrigation, municipal and industrial purposes. The Ute Mountain Ute Tribe is to receive 57,400 a/f of stored reserved water and 27,400 a/f of direct flow reserved water. These water rights will become the most valuable natural resource belonging to the Tribes.

The Agreement of December 10, 1986 also incorporates a cost sharing arrangement satisfactory to the Secretary of Interior necessary to permit the long promised, but yet to be constructed Animas-La Plata Project to become a reality. Both the Dolores and the Animas La-Plata Projects are required to create a sufficient reservoir of stored water so that the competing claims for Indian water and non-Indian water can both be satisfied. Congress understood years ago that these two projects would be required to support the water requirements existing in Southwest, Colorado and Northwest, New Mexico. That is why in 1968 Congress enacted the Colorado River Basin Project Act, 43 U.S.C. § 61(a)(1) to assure that the Dolores and Animas-La Plata Projects would be constructed on a timetable roughly comparable to the construction of the much larger Central Arizona Project.

Of course, in the years since 1968, the Central Arizona Project has been generously supported by Congress, and much of that mammoth and important project is nearing completion.

Hence, the agreement of December 10, 1986 not only resolves long standing federal vs. state water rights claims, but also renews a commitment by and to the States of Colorado and New Mexico, the Tribes, and the thousands of non-Indian water users to complete Congress' original plan to build adequate water storage facilities to assure a future economy utilizing Colorado and New Mexico's allocations of Colorado River water.

IV. RESOLUTION OF THE TRIBES' FEDERAL WATER RIGHTS CLAIMS

Federal law, notably Winters v. United States, 207 U.S. 564 (1908) and Arizona v. California, 373 U.S. 546 (1963) recognize that when the United States sets aside the Indian reservations a sufficient amount of water is deemed to have been reserved in order to allow the reservation Indians to develop a permanent economy. While typically these so-called Winter's Rights federal water claims are measured on the basis of the amount of irrigable acreage on such reservations, federal law recognizes that waters once secured may be used for a variety of purposes.

In United States v. Akin, 424 U.S. 800 (1976), the United States Supreme Court ruled that the Winter's Rights claims of the two Colorado Ute Tribes secured by the Treaty of March 2, 1868 were to be litigated in the state courts of Colorado. As a result of that decision an enormous number of claims have been filed throughout the rivers and streams passing through and adjacent to the two Ute Indian Reservations. If these broad reaching federal reserved water rights claims were prosecuted to their finality, it is estimated that a number of agricultural communities in southwest Colorado and northwest New Mexico would be deprived of the water which is the life blood of their economies. Hence, the need for an amicable and fair settlement of these claims taking into account water made available as a result of Congress' authorization of the Dolores and Animas La-Plata projects has spurred the creation of the Colorado Ute Water Rights Settlement Act. With this Act, all Winter's Rights federal water claims of the two Tribes not expressly secured in the legislation will be extinguished.

V. RESOLUTION OF THE TRIBES' BREACH OF TRUST CLAIMS AGAINST THE UNITED STATES

Wholly independent of the Winter's Rights federal water claims now being prosecuted in the state courts of Colorado against non-Indian water users, are independent federal breach of trust claims which the Tribes have asserted against the United States. These claims arise out of 100 years of dealings by the United States with the Tribes water resources.

These breach of trust claims include the Ute Mountain Ute Tribe claim that the United States in constructing in the 1940's the Mancos Reclamation Project knowingly and intentionally subordinated the senior water rights claims of the Tribe to the benefit of non-Indian farmers upstream from the Ute Mountain Ute Reservation. The unlawful appropriation of power revenues by the United States for its own purposes utilizing the Winter's Rights water of the Tribes constitutes a second breach of trust claim. The failure of the United States to deal impartially with its upper basin and lower basin Indian beneficiaries which emerges from the failure of the United States to construct the Dolores and Animas La-Plata projects on the same timetable with the Central Arizona Project constitutes a third breach of trust claim. These claims, and others, will be finally extinguished once the Settlement Act is enacted.

VI. FULFILLMENT OF CONGRESS' 1968 COMMITMENT TO COLORADO AND NEW MEXICO

The legislation implements a sixty year national obligation to develop the waters of the Colorado River for Indians and non-Indians living both in the upper and the lower Colorado River basin states. Both Congress and the United States Supreme Court have confirmed that the responsibility for development of the resources of the Colorado River constitute a national challenge and a national problem. See Fall Davis Report, S. Doc. No. 142, 67 Cong. 2d Sess. (1922) and Arizona v. California, 373 U.S. 546, 555 (1963). Congress and the Supreme Court have understood that a national plan must be implemented to overcome the competing interests of the various states, and under the national plan the

Secretary of the Interior has been authorized to construct and to maintain water resource projects for the benefit of municipal, industrial and agricultural users throughout the upper and lower basins.

Congress' mandate to the Secretary to proceed to develop the Colorado River resulted in the 1928 Boulder Project Act for the Lower Basin, the 1968 Colorado River Project Act, 43 U.S.C. § 1501-1556 authorizing the construction of the Central Arizona Project, and in the 1968 Colorado River Storage Project Act, 43 U.S.C. § 620, mandating that parallel projects in the Upper Basin be built on the same timetable as the Central Arizona Project.

In the Boulder Project Act, the Secretary was directed to allocate the rivers of the Lower Basin and to proceed to construct and develop Hoover Dam and in the 1968 Colorado River Project Act, the Secretary was directed to build the Central Arizona Project, again for the Lower Basin. But in the 1968 amendment to the Colorado River Storage Project Act, the Secretary was directed to proceed to develop comparable facilities in the Upper Basin. In all cases Congress intended the Secretary to be the driving force behind a national plan to develop the Colorado River. As the Supreme Court noted in Arizona v. California, 373 U.S. at 589, Congress insisted that there be "unitary management" and a "coordinated plan," in order to accommodate the often conflicting interests of the Colorado River basin states.

The same desire to create a unfettered national scheme for the Colorado River was expressly revealed in the 1968 amendment where Congress directed the Secretary to "proceed as nearly as practicable with the construction of the Animas-La Plata ... Project concurrently with the Central Arizona Project, to the end that such project(s) shall be completed not later than the date of the first delivery of water from the Central Arizona Project." The legislative history confirms that Congress "required" the Secretary to plan and accomplish both pre-construction and construction activities of the Upper Basin Projects, including the Animas-La Plata, in such a manner that the projects would be capable of operation not later than the date of the first delivery of the Central Arizona Project water. See H.R. Rep. No. 1861, p. 26 (1968).

The special authorization given the Animas-La Plata Project was for the very same purpose Congress had early on identified to justify the development of the Boulder Dam project and the Central Arizona Project -- namely, to strengthen the economies of the area served by the project and to provide a dependable water supply to meet the ever growing needs for agricultural, municipal and industrial uses for all of the Colorado River states. See H.R. Rep. No. 1312, p. 22, 55.

> The attainment of this object can resolve one of the major facets of the aged old conflict over use of Colorado water. Thus, by providing for concurrent construction of these projects the Committee is also expressing its desire that they

> be adequately funded through support of the executive branch and appropriations of moneys by the Congress. (emphasis added)

H. Rep. No. 1861, p. 26 (1968).

The 1968 legislation not only carries forward Congress' plan to have the Secretary implement a national strategy free of conflicting state interests for the Colorado River. It also carries forth the United States commitment to the various Indian Tribes that were established along the tributaries and the main stream of the Colorado river. As was noted in Arizona v. California, when each of the Indian Reservations in the Upper and Lower Basins were created, and most were created before the territories were divided into separate states, the United States expressly set aside sufficient amount of waters to sustain the Reservations. As the Supreme Court in Arizona v. California noted:

> Most of the land in these Reservations is and always had been arid. If the water necessary to sustain life is to be had, it must come from the Colorado river or its tributaries. It can be said without overstatement that when the Indians were put on these Reservations they were not considered to be located in the most desirable area of the nation.

373 U.S. at 598.

Hence, when in 1968 Congress directed the Secretary to establish on a priority schedule a number of Upper Basin projects, including the Animas-La Plata Project, Congress was carrying forth a commitment of the United States made to the Ute

Indians of Colorado in 1863, 1868 and in 1895, when the United States entered into treaties and agreements to set aside a permanent homeland in Colorado for the Ute Indians containing sufficient water to allow the Indians to live securely.

To conclude, Congress' 1968 commitment to the Upper Basin States and to the Ute Indians in Colorado to build the Animas-La Plata Project established what Congress believed to be a critical Upper Basin component to its national plan to develop the Colorado River. That 1968 commitment also guaranteed fair treatment for both Upper Basin Indian and non-Indian users of Colorado River waters.

VII. ANIMAS LA-PLATA PROJECT COST SHARING

While the overall Colorado Ute Indian Water Rights Final Settlement Agreement was signed on December 10, 1986 and requires the Settlement Act as set forth in S.B.1415 to implement its provisions, a related development occurred on June 30, 1986. That related development was the execution of an agreement for cost sharing and financing of the Animas La-Plata project in satisfaction of the requirements of Congress in IV of Pub. L. 99-88. That June 30, 1986 agreement, expressly undertaken in coordination with the water rights settlement, provides the precise federal, state and local contributions to the construction of the Animas La-Plata project and to the overall settlement of Colorado Ute Indian water rights. Under the cost sharing arrangement, the non-federal contribution equals nearly 240 million dollars and represents 38% of the combined cost of the construction of the Animas La-Plata project and the settlement of the Tribes' Winter's Rights federal water claims.

VIII. TRIBAL DEVELOPMENT FUNDS

An important component of the Settlement Act and a significant focus of cost sharing is the establishment of two tribal development funds designed to allow the Ute Mountain Ute and Southern Ute Indian Tribes to put their water resources to practical and economic beneficial use. The development funds totaling 60.5 million dollars are created by state and federal contributions. The funds will be managed by the Secretary of the Interior, will be utilized by the Tribes to develop water and other natural resources on the Reservations, and will become significant contributors to the federal goal of making the two Ute reservations in Colorado permanent and viable homelands for the Ute Indians.

The State of Colorado is contributing 11 million dollars to the development funds and the United States is contributing 49.5 million dollars. Six million dollars of the State of Colorado contribution has already been allocated for construction of the Cortez-Towaoc pipeline -- designed to bring for the first time water for domestic purposes to the Ute Mountain Ute Reservation. In addition, the State of Colorado in the Agreement committed 5 million dollars to be put into the Tribes' two development fund for economic development purposes. The federal government's 49.5 million dollar contribution will be made in three appropriations, the first one of 19.5 million, the second one of 15 million, and the third one of 15 million.

As noted above, the development funds are intended to establish in the Tribes the financial capability to utilize their water resources to create a permanent Reservation economy. The amount of the development funds reflects a recognition of (i) the money saved by the State and its local subdivisions by foregoing the costs of litigation (ii) and the injury to the local economy caused by the Tribes' assertion of their senior water rights in court, and (iii) the Tribes' willingness in the Agreement to relinquish successful breach of trust claims against the United States.

As noted above the federal monies will be added to the State contribution to establish two permanent economic development funds -- one for the Ute Mountain Ute Tribe and one for the Southern Ute Tribe. As we describe below, the development funds will be used to take the wet water achieved by the settlement and begin to develop a viable and long term economy for the Reservations.

IX. PROJECTED USES OF THE UTE MOUNTAIN UTE TRIBE DEVELOPMENT FUNDS

A. Tribal Pilot Project.

Currently the Tribe is developing with its own monies a demonstration project for irrigation development on the Reservation in anticipation of water to be delivered from the Dolores Project. Side roll sprinklers are being used to irrigate 80 acres of alfalfa, a center pivot sprinkler system is irrigating 50 acres of alfalfa, and over 300 acres of land is being flood irrigated for pasture hay on the Reservation. The purpose of these demonstration projects is to provide the Tribe with some practical experience utilizing the Reservation's soils, climate, costs, and market, so that when the Dolores Project water begins to be delivered in approximately 1993, the Tribe will be in a good position with "hands on" experience, professional capability, and monies from the development funds to commence the development of a viable agricultural economy on the Reservation.

The following project descriptions are preliminary in nature. They are provided as a guide to the probable use of the Ute Mountain Ute Tribe's development funds, but we can provide no assurances at the present time that these projects will each prove to be sufficiently economically feasible so as to justify an allocation of monies from the Tribe's development fund.

B. Dolores Project Development.

The Dolores Project will supply municipal and industrial water through the Towaoc pipeline and a significant amount of agricultural water through the combined Highline Canal. One million dollars will be spent to develop a municipal and industrial water pipeline and distribution system within the Reservation once the Towaoc pipeline is built. In addition, a portion of the development fund will be allocated to an operation, maintenance and replacement ("OM&R") fund for the water treatment and water distribution system.

With respect to irrigation development, sprinkler systems, farm equipment, land preparation, installation of power lines, and construction of access roads must be undertaken in order to put the Dolores Project water to agricultural use on the Ute Mountain Ute Reservation. Based on 1986 cost estimates, to develop 7,500 acres of land for irrigation, a $10,200,000 commitment will be required. The OM&R costs for the irrigation facilities will be covered by the development fund during the first ten years, and after ten years income from the farming enterprise will cover the OM&R costs.

C. Animas-La Plata Project Irrigation.

Under the Agreement, Part II of the Animas-La Plata Project is to be developed by the Tribes, local water users, and the State of Colorado. As in the case of farm developments for the

Dolores Project, an allocation from the development fund will be required for farm development, capital costs and for OM&R coverage at the time when the Tribe elects to develop the Animas-La Plata Reservation lands. Sprinklers, land preparation, farm equipment, facility OM&R, and pipe laterals must all be developed to bring the Animas-La Plata waters to the Reservation farm. The projected 1986 farm costs are $15,400,000 and the required pipe laterals are estimated at 1986 construction costs to equal $48,100,000. Moreover, a 1 million dollar a year OM&R cost with respect to these agricultural facilities will be covered by the development fund for ten years until farm income is fully developed.

D. San Juan River Project.

The Tribe will likely develop for agricultural purposes its water allocations from the San Juan River provided for in the Agreement, and the capital costs are estimated at $1.5 million in 1986 costs and a ten year $35,000 per year OM&R allocation.

E. Pilot Project Data Shows Reservation Farming is Profitable. The Tribe's ongoing farming operations demonstrate that Dolores and ALP waters can create profitable farming operations. The Tribe estimates that the 7500 acres of Ute Mountain Ute Reservation lands targeted to be served by the Dolores Project can be economically irrigated under the following cropping pattern:

Acres Planted

Alfalfa	1,500 acres
Wheat	2,250 acres
Oats	380 acres
Beans	2,250 acres
Corn	750 acres
Barley	380 acres

Gross Income

Alfalfa	$495,000
Wheat	562,500
Oats	76,000
Beans	652,500
Corn	255,000
Barley	83,600

Expenses

Alfalfa	$312,700
Wheat	385,900
Oats	58,900
Beans	435,400
Corn	203,600
Barley	65,200

The expenses included here include the cost of acquiring and applying seed, chemicals and fertilizer; the cost of applying water; the cost of acquiring and operating farm equipment; the cost of operation and maintenance for project facilities; the cost of harvesting and marketing all crops; management costs; and all replacement costs except for on-farm sprinkler equipment. The expenses are based upon local Colorado actual cash experiences.

*Net Income[1]

Alfalfa	$182,300
Wheat	176,600
Oats	17,100
Beans	217,100
Corn	51,400
Barley	18,400

X. POTENTIAL OFF-RESERVATION WATER MARKETING.

It is the plan of the Ute Mountain Ute Tribe to commit as a first priority its reserved waters to agricultural development on the Reservation. If after full development of the agricultural operations on the Reservation, water secured to the Tribe under the Agreement remains unused, the Tribe's next priority is to market water off the Reservation within the State of Colorado. If the instate market does not utilize all of the Tribe's unused reserved water secured under the Agreement, the Ute Mountain Ute Tribe will then consider the feasibility of marketing its water out of State.

The possibility of out of State leasing has created concern among the states which utilize Colorado River water. The Agreement as well as S.B. 1415 expressly and unambiguously provide that nothing in either document advances the Tribe's claims that it may under applicable federal and state law market its water out of State.

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[1] This cropping pattern represents what the Ute Mountain Ute Tribe currently believes to be the most profitable and feasible farm operation utilizing the Dolores Project and Animas-La Plata Project waters. If necessary, the Tribe is prepared and able to successfully farm Reservation acreage with a cropping pattern that excludes wheat and corn and utilizes a substitute cropping allocation.

Whether or not the Tribe may market its water out of State depends upon a final federal court determination of whether the law of the Colorado River (that is, the federal and state law enacted over the years relating to how the waters of the Colorado River are to be utilized) will permit such use. The Ute Mountain Ute Tribe finds it particularly ironic that some current users of Colorado River water, such as the Metropolitan Water District in Los Angeles, California, want to condition their support for S.B. 1415 on the insertion of an outright prohibition on out of State leasing by the Ute Mountain Ute Tribe. We find this position of Metropolitan Water District to be particularly disturbing, because the Tribe's ability to market its water out of Colorado will turn on the Tribe's rights under the Commerce Clause of the United States Constitution (which of course all users of Colorado are subject to) and the 1922 and 1948 compacts allocating water along the Colorado River (again which all users of the Colorado River are subject to). That is, the Tribe will be able to market water out of Colorado only if the existing law created by long standing users of Colorado River water permits such marketing.

To conclude, the Agreement and the Act are truly "neutral" on the out of State marketing issues. The Ute Mountain Ute Tribe intends to play by the rules in terms of its ability to utilize its water. Since 1868 the Tribe has been willing to permit the courts of the United States to determine precisely where and under what conditions the Tribe may utilize its federal reserved water rights. The Tribe intends to follow the rule of law in the future. But, the Tribe is unwilling to allow water users such as the Metropolitan Water District to dictate to it and to its neighbors exactly how its federal reserved rights are to be managed.

XI. CONCLUSION

The Ute Mountain Ute Tribe requires the support of Congress to finally end its 100 year struggle to secure water which is essential to preserving the Reservation as a permanent homeland. Both the Agreement and S.B. 1415 represent a major accomplishment on the part of the Indians, non-Indians, State of Colorado and New Mexico officials, and officials of the United States Departments of Interior and Justice. We appreciate your consideration and your votes to enact this long overdue settlement.

STATEMENT OF LEONARD C. BURCH, CHAIRMAN SOUTHERN UTE INDIAN TRIBE ON S. 1415, THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

DECEMBER 3, 1987

My name is Leonard C. Burch; I am the Chairman of the Southern Ute Indian Tribe. On behalf of the Tribe and its governing body, the Southern Ute Indian Tribal Council, I welcome the opportunity to testify in support of S.1514, which will carry out the Colorado Ute Indian Water Rights Final Settlement Agreement dated December 10, 1986.

Although originally the Ute Indians claimed all of Colorado, large portions of Utah and parts of Arizona and New Mexico, the present Southern Ute Indian Reservation, located in the southwest corner of Colorado, measures only 15 miles by 73 miles. Our Reservation runs from the Continental Divide in Southern Colorado westward to the boundary with the Ute Mountain Ute Reservation. It encompasses the stream valleys of the San Juan, Piedra, Pine, Navajo, La Plata and Animas Rivers. It is high, dry country with elevations ranging from a little less than a mile above sea level to 7500 feet. Not all of our Reservation land is owned by the Tribe or tribal members; rather, we have a "checkerboard" reservation with non-Indians owning a substantial amount of land. The Tribe's rights to its lands were formally recognized in the Treaty of March 2, 1868, although later actions reduced the size of the Reservation.

The December 10 Agreement was signed by the State of Colorado, the Ute Mountain Indian Tribe, the Southern Ute

Indian Tribe, the Departments of Justice and the Interior, as well as many non-Indian water users in southwest Colorado. It follows two years of negotiations and over fifteen years of litigation concerning the Winters reserved water rights claims of the Tribe in southwest Colorado.

We are very proud of the Agreement. It reflects a lot of hard work by our Tribal Council and our tribal staff. The Agreement is strongly supported by the Tribe. I have attached two tribal resolutions of the Southern Ute Indian Tribal Council endorsing and supporting the Agreement and its concepts. Over the years, we have carefully considered and weighed the needs of the Reservation and our tribal members in the area of water development. The choices were not always easy, but we are comfortable that this Agreement meets those needs and will give us the ability to develop the resources of our Reservation. It is encouraging to us that the "system" can work for the Tribe. The Tribe worked long and hard in support of the Animas-Las Platas Project and was pleased that Congress authorized it in 1968. Now we are pleased that, together with our neighbors, we can use that Project to solve what otherwise will be a long and bitter lawsuit affecting all of southwest Colorado.

Through the Agreement, the disruptive lawsuit over the Tribe's Winters reserved water rights claims is settled by providing the Tribe with an additional dependable yearly water supply of about 40,000 acre feet. The Agreement also provides for the administration of tribal and non-tribal water rights in a cooperative and responsible manner and settles substantial breach of trust claims by the Tribe against the United States. Finally, by protecting existing non-Indian water users and local economies, the Agreement continues the valuable friendship that exists between the Indian and non-Indian communities of southwest Colorado.

An important part of the settlement is the construction of the Animas-La Plata Project, which will provide additional water to Indians and non-Indians. Without that additional water supply, I do not think settlement would be possible. The La Plata River crosses the Southern Ute Reservation; development on the Reservation cannot take place without water from the La Plata River, and the Tribe has a very strong claim to reserved water rights from that stream. Unfortunately, tribal water rights in the La Plata River have never been quantified, and non-Indians in Colorado and New Mexico have appropriated all the flow of the river. If the Tribe is forced to litigate its rights, those users will be left with useless junior priorities on a water-short stream. The ALP also played a key role in settling the tribal rights on other streams. Without the water available from the Project, it would have been impossible for the Tribe to accept the present compromises on the other Rivers covered by the settlement. Finally, the Project is important since it will provide the development of our farmland in the La Plata basin. As I mentioned, tribal lands are checkerboarded with non-Indian land in that area, and the Project will provide water for all. The Tribe could not hope to develop these area without the assistance and cooperation of the other project water users.

The negotiated settlement also calls for the establishment of a fund to assist the two Tribes in developing their reservation resources so that those lands can in fact become a permanent homeland for tribal members. The development fund provides $20 million to the Southern Ute Indian Tribe and $40.5 million to the Ute Mountain Tribe. Of the total $60.5 million in the tribal development fund, the State of Colorado will contribute $11 million. The remaining $49.5 million of the fund is a federal obligation under the agreement to be paid as follows: "$19.5 million in year one; $15 million in year two; and $15 million in year three."

Let me explain the need for the development fund requested by the Southern Ute Indian Tribe. The Winters doctrine is a promise by the United States that the Tribe will be able to develop its Reservation in order to give tribal members a chance to earn a living. Agriculture is very important to our Tribe, but we are limited by our water supplies and the lack of facilities to put our water to use. Although over half our families have farms or ranch land, our young people need land to farm and our ranchers need more irrigated land to support their needs.

We are fortunate that on behalf of the Southern Ute Indian Tribe, the United State went to court over the Tribe's reserved water rights from the Pine River and built irrigation facilities on the Indian lands which could be served from that stream. Today, that project produces crops valued at over $1 million per year. On the other streams of the Reservation, the United States did not meet its commitments. Despite the Winters doctrine, the United States let non-Indian water users use water from those streams and rely on that water for their farms, ranches and towns. In fact, the United States itself has used our water to generate hydroelectric power, which it sells to pay for irrigation facilities on lands in the Colorado River basin. For the present settlement to be acceptable it must help the Tribe put all its water to use, as well as recognize tribal water rights. The development fund is the only way to do this.

We want to develop an economic plan to use our share of the development fund. Under a grant from the Adminstration for Native Americans, the Tribe has begun the task of planning exactly how we can use our Reservation resources, including the water provided under the Agreement. The final plan would be approved by the Secretary of the Interior, and would establish priorities for spending monies from the fund. We are considering using the funds for the development of the water resources provided under the Agreement; for various agricultural-related activities, perhaps the purchase of a grain elevator or the development of a livestock feedlot; for other economic development, such as recreational development on the east side of our Reservation; and for the use of the other resources of our Reservation. As you can see, these funds are obviously important to the future of our Tribe.

As you know, the negotiated agreement requires the enactment of federal legislation before the settlement is final. We have recently agreed with the Department of the Interior on language which will accomplish the desired results. Under the terms of the Agreement, federal legislation is needed to provide the Tribe with relief from the Non-Intercourse Act, 25 U.S.C. § 177, which otherwise would prohibit leasing of tribal water; to relieve or defer tribal repayment obligations for the construction of the Animas-La Plata and Delores Projects; to assure that Federal reclamation law will not restrict the uses of tribal water; to authorize the appropriation of the federal contributions to tribal development funds; to authorize the waivers of courts answer these technical legal questions about the scope of the rights given the Tribe in 1868 and to decide whether Congress has changed those rights over the years. Attached is a brief discussion of the basis of our position in response to those who ask for a prohibition on such leasing. I want to emphasize, however, that the Tribe is prepared to work with those other basin states who simply want additional assurances that the Agreement and legislation do not seek to resolve this question, but rather leave the dispute open for future judicial resolution. We hope that we can reach agreement on language for the bill and perhaps amend the agreement in a way that will satisfy these concerns. In short, we do not ask the water users in the lower basin to agree to our position on these matters.

During our discussion, we called the approach of leaving the question of whether existing law prohibits out-of-state leasing of tribal water for future litigation "neutrality." We know that some downstream water users want Congress to take away from the Tribe even the opportunity to litigate this question. I think that those unwilling to accept neutrality want to keep Colorado, New Mexico, and the Tribes from using their share of the Colorado River so that downstream users can keep getting it for free like they do now. If lower-basin water users kill this settlement, southwest Colorado, will be fighting in court for years over tribal breach of trust claims; and to direct the Secretary of the Interior to comply with the administrative provisions of the Agreement.

Each of these "requirements" is a vital part of the Agreement. For example, S. 1415 would satisfy the Indian Non-Intercourse Act, 25 U.S.C. § 177, which otherwise would stop the Tribe from transferring or leasing its water rights off the Reservation. Although we hope to use our water rights on the Reservation for the development of Reservation resources, we recognize that problems may arise in meeting that goal. Like water-users everywhere, the tribe and its interests may be better served by allowing other to use our water for a while in return for adequate payment. We don't think that the Non-Intercourse Act should keep us from receiving the full value of our water rights On the other hand, we know that some downstream users argue that the "law of the river" does not allow such transfers and that the Winters doctrine did not give the Tribe a water right that could be transferred. Some of those entities want Congress to address this issue by prohibiting tribal leasing out of state. Although the Tribe strongly disagrees with those who argue that the "law of the river" and the reserved rights doctrine forbid the leasing of our water out of state, we have agreed not to ask Congress to modify or clarify what it has previously said. Instead, we are satisfied to have the these water rights. In the meantime, those users will continue to get our water. We think that neutrality is the only fair approach, and hope that Congress will too.

As you can see, this settlement is very important to all of southwest Colorado. It will provide for a fair settlement of the Tribe's Winters rights claims and give a much-needed boost to our agriculture. We hope that you will favorably consider this bill. Thank you. I would be pleased to answer any questions you may have.

PREPARED
STATEMENT OF WAYNE N. MARCHANT
DEPUTY ASSISTANT SECRETARY FOR WATER AND SCIENCE

Mr. Chairman and members of the Committees, I am here today to present the views of the Department of the Interior on S. 1415, "The Colorado Ute Indian Water Rights Settlement Act of 1987."

As you are aware, on December 10, 1986, the two Colorado Ute Tribes, the State of Colorado, several other parties and representatives of the federal government entered into a "Final Settlement Agreement" for the purpose of settling the outstanding water claims of the tribes on several streams in southwest Colorado. In this instance, exercise of the 1868 priority date of the tribes' federal reserved water rights claims could severely disrupt the existing regimen of water use on those streams. By way of compromise, and in an admirable display of community spirit, the tribes have agreed to forego this early priority date in return for water supplied from the Dolores and Animas-La Plata Projects.

We support legislation to implement the December 10, 1986, Final Settlement Agreement. However, as presently drafted, S. 1415 differs from the Final Settlement Agreement in several important respects. We have been working with the non-federal parties on legislation consistent with our previous agreements regarding Ute Indian Water rights and construction of the Animas-La Plata Project. Attached to my statement is a copy of recommended amendments to S. 1415 that have been agreed to by the federal and non-federal parties to the Final Settlement Agreement.

I want to emphasize the interests we have had in pursuing the Animas-La Plata Project. This Administration has long had as a standard for new water projects that the projected long-term benefits of the project must at least equal its projected costs. Under this standard, the Animas-La Plata Project is not economically feasible at current discount rates, although it would be considered economically feasible at its authorized discount rate of 3.25 percent.

In evaluating this project, we have considered the benefit/cost standard, non-federal cost sharing, and water rights settlement concerns. We have, therefore, decided to participate in the Animas-La Plata Project because it combines federal construction expenditures with non-federal monies to produce a project that provides for water development and settles the Indian water claims.

The Animas-La Plata Project will provide a means to satisfy the water claims of the Colorado Ute tribes, while leaving intact the historical uses already in place on these streams. As trustee for these tribes, the Department of the Interior desires to see the tribes establish secure and valuable water rights that will be of true benefit to the tribes, rather than mere "paper" water rights. The project provides an opportunity to achieve these objectives.

Without doubt, the single most controversial aspect of this bill is Indian water leasing. The bill provides for the Tribes to have the opportunity to lease water provided by the settlement for off-reservation use both in the State of Colorado and out of state. We must emphasize here that the December 10 Agreement provides for in state leasing subject to Colorado procedural law, and for out of state leasing subject to a judicial determination of the tribes' right to do so given the "Law of the River" and Colorado's anti-export statute. In other words, there was to be no guarantee, either in the Agreement or in the legislation, or by the federal government for that matter, that the tribes would be able to lease out of state, but neither would there be a prohibition.

If the right to lease out of state the water provided by this settlement is established by the tribes judicially, we expect that at least two benefits would result:

--For the tribes, water from the settlement would become a source of capital to plan and develop reservation economies.

--For the United States, Indian water leasing would establish an improved potential for the economic use of project water and thereby enhance project repayment.

At this point, I would like to outline the process that was used to develop the implementing legislation. The December 10, 1986, Agreement requires legislation to implement some of its provisions. The settlement agreement also provides that before the settlement can become effective, the State of Colorado, the tribes and the United States must each certify that the legislation is satisfactory. In the months following the settlement agreement, we worked with the non-federal parties to draft the implementing legislation. Concern by the non-federal parties that the implementing legislation be introduced in time for enactment by the 100th Congress led to the introduction of S. 1415 before we had come to full agreement on certain of its provisions. In addition to those unresolved issues, S. 1415 introduces some new issues which we had not had the opportunity to discuss with the non-federal parties, and changes some language we had previously agreed upon. As I indicated earlier, we have since met with the non-federal parties and agreed upon the amendments to S. 1415 that would be necessary to fulfill the terms of the December 10 Agreement. Those amendments are attached.

In closing, I want to express my appreciation for this opportunity to appear today before these Committees. I will be happy to respond to any questions you might have.

Proposed Changes to S. 1415 and H.R. 2642
The Colorado Ute Indian Water Rights Settlement Act of 1987

October 15, 1987

The Departments of the Interior and of Justice, the State of Colorado, the Ute Mountain Ute Tribe, and the Southern Ute Tribe propose that the following changes be made to S. 1415 and H.R. 2642.

1. Change section 4 of the bills to read as follows:

> SEC. 4. TRIBAL RESERVED WATERS.
>
> (a) WATER FROM ANIMAS-LA PLATA AND DOLORES PROJECTS.--The Secretary is hereby authorized to use the Animas-La Plata and Dolores Projects to supply reserved water to the Tribes in accordance with the Agreement.
>
> (b) APPLICATION OF FEDERAL RECLAMATION LAWS.--The reserved water supplied to the Tribes or their lessees from the Dolores and Animas-La Plata Projects shall be treated in all respects in the same manner, except as provided in the Agreement, as the Tribes' other reserved waters.

2. Change subsection 5(a) of the bills to read as follows:

> (a) GENERAL AUTHORITY.--Subject to the approval of the Secretary and to the provisions of its constitution, each Tribe is authorized, pursuant to 25 USC 177, to enter into water use contracts to sell, exchange, lease, or otherwise temporarily dispose of water in accordance with Article V of the Agreement, but the Tribes shall not permanently alienate any water right. The maximum term of each such water use contract, including all renewals, shall not exceed 50 years in duration. The authorization set forth in this subsection does not address whether the sale, exchange, lease, or other temporary disposition of water by the Tribes is permitted or prohibited by--and therefore shall not be interpreted to amend, construe, supercede or preempt--any state law, Federal law, interstate compact, or international treaty that pertains to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

3. Delete subsection 5(c), "Scope of Authorization," and redesignate subsection 5(d), "Per Capita Payments," as 5(c) in both bills.

4. Change the title of subsection 6(d) of the bills to read: "Secretarial Deferral."

5. Insert the word "gross" before the word "revenues" in line 18 on page 9 of S. 1415 and in line 21 on page 9 of H.R. 2642.

6. In the last sentence of subsection 7(c)(3), insert the language "the approval of an economic development plan or from" after the words "arising from" in line 12 on page 13 of S. 1415 and in line 16 on page 13 of H.R. 2642.

7. Change section 9 of the bills to read as follows:

> SEC. 9. ADMINISTRATION.
>
> In exercising his authority to administer water rights on the Ute Mountain Ute and Southern Ute Indian Reservations, the Secretary, on behalf of the United States, shall comply with the administrative procedures governing the water rights confirmed in the Agreement and the Final Consent Decree to the extent provided in Article IV of the Agreement.

8. Delete subsection 11(b), "Individual Members of Tribes," from section 11 and redesignated it as section 12 in both bills.

9. Redesignate section 12, "Effective Date," as section 13 in both bills.

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

DEC 16 1987

Honorable Daniel K. Inouye
Chairman
Select Committee on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

At the December 3, 1987, hearing chaired by Senator Wirth, I presented the views of the Department of the Interior on S. 1415, "The Colorado Ute Indian Water Rights Settlement Act of 1987." As I promised in my oral testimony, I am providing this additional information for the record.

During the course of the hearing, Senator Wirth asked whether there was a deadline in the December 10, 1986, Settlement Agreement by which the Animas-La Plata Project was to be constructed. The Agreement does not provide a date certain for completion of the Animas-La Plata Project. There are, however, dates set forth in the Agreement that trigger certain options which the Tribes may take to finally resolve their federal reserved water rights claims on the Animas and La Plata Rivers in the event certain facilities of the Project are not completed so as to enable delivery of water to the Tribes. It is the purpose of this letter to set forth these construction "deadlines" which appear in the December 10, 1986, Agreement and to briefly describe what happens if the "deadlines" are not met.

The Ridges Basin Reservoir is a major component of the Animas-La Plata Project. The December 10, 1986, Agreement essentially provides that if the Ridges Basin Reservoir and associated facilities required to provide for delivery of water to the Tribes are completed by January 1, 2000, the settlement of the reserved water rights claims of the Tribes on the Animas and La Plata Rivers will become final. If the Ridges Basin Reservoir and associated facilities are not completed by January 1, 2000, then the Tribes have an additional five-year period, or until January 1, 2005, in which to elect to either keep their project reserved water rights supplied from the Animas-La Plata Project, or to initiate litigation or renegotiation of their reserved water rights claims on the Animas and the La Plata Rivers. If the Tribes have made no election by January 1, 2005, they shall be deemed to have elected to retain their project reserved water rights, and the settlement of their pending reserved and appropriative water rights claims on the Animas and the La Plata Rivers will become final. If the Tribes elect to commence litigation or renegotiation of their pending reserved water rights claims on the Animas and the La Plata Rivers, they relinquish and forfeit the project reserved water rights from the Animas-La Plata Project. The Tribes, however, may revoke an election to litigate or renegotiate and accept the project reserved water rights in final settlement of their claims should the project facilities be completed at any time after their election.

These "deadlines" and the tribal options associated with these dates are more fully set forth in Article III of the Agreement. For the Ute Mountain Ute Tribe, please refer to Article III, Section A, subsection 2(f), beginning near the bottom of page 19 of the Agreement and ending on page 22. For the Southern Ute Tribe, please refer to Article III, Section B, subsection 1(f), beginning near the bottom of page 30 of the Agreement and ending on page 33.[1]

These "deadline" provisions affect other sections of the Agreement, as for example, the waiver and release provisions. Section 8 of S. 1415 calls for a waiver and release of claims by the Tribes as provided in the Agreement. Article VI, Section A, subsection 1(e) of the Agreement sets forth the provisions for the waiver and release of claims by the Tribes. This subsection 1(e), which appears on pages 64 to 66 of the Agreement, refers to the "deadlines" described above by making reference to pertinent subsections of Article III of the Agreement. In essence, the waiver of claims by the Tribes will not be effective until Phase I of the Animas-La Plata Project as defined in the June 30, 1986, Binding Agreement for Animas-La Plata Cost-Sharing is complete or the Tribes elect to retain the project reserved water rights as described in Article III, Section A, subsection 2(f)(ii) or Article III, Section B, subsection 1(f)(ii).

If you have additional questions, we will be happy to answer them.

A similar letter has been sent to the Honorable Bill Bradley, Chairman, Subcommittee on Water and Power, Committee on Energy and Natural Resources.

Sincerely,

Wayne N. Marchant

Wayne N. Marchant
Principal Deputy Assistant Secretary
for Water and Science

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[1] The Agreement also contains similar "deadline" provisions with regard to the completion of the Dolores Project facilities. See Article III, Section A, subsection 1(g)(i) and (ii) on pages 11 to 13 of the Agreement.

STATEMENT

OF

MYLES E. FLINT
DEPUTY ASSISTANT ATTORNEY GENERAL
LAND AND NATURAL RESOURCES DIVISION

BEFORE

THE

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
AND THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES
SUBCOMMITTEE ON WATER AND POWER
SENATE

CONCERNING

S. 1415. A BILL TO FACILITATE
AND IMPLEMENT THE SETTLEMENT OF COLORADO
UTE INDIAN RESERVED WATER RIGHTS CLAIMS
IN SOUTHWEST COLORADO, AND FOR OTHER PURPOSES

ON

DECEMBER 3, 1987

Messrs. Chairmen and members of the Committee and Subcommittee, I appreciate the opportunity to appear before you today to express the views of the Department of Justice on S. 1415, "THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987."

The road to this settlement has been long and difficult. In 1972, the United States commenced litigation to adjudicate the federal reserve water rights of the Ute Mountain Ute and southern Ute Indian Tribes of Colorado. Because of the impact the litigation would have in the West, the issues in the case were hotly contested every step of the way. In fact, the sole issue of whether the water rights should be determined in state of federal court reached the Supreme Court in 1976 in Colorado River Water Conservation District v. United States, [424 U.S. 800], commonly known as the Aikin case. Following the Aikin decision, a number of other battles were fought in the courts relating to federal reserved water rights. The litigation seemed endless.

The reserved water rights of the Tribes date back to an 1868 treaty, and until these water rights are quantified and determined with finality, the State of Colorado and the non-Indian communities in the region cannot conduct any long-range economic planning with an intelligent understanding of the water resources available to them. In addition, the magnitude of the Indian reserved water rights claims, and the early priority date for such water rights, pose a substantial threat to the livelihood of non-Indians of southwest Colorado with the potential for seriously disrupting long-established uses of water. Faced with the seriousness of this situation, as well as the likelihood that litigation would go on for decades with no satisfactory results, the Ute Mountain Ute and Southern Ute Indian Tribes, in an admirable spirit of compromise, expressed a willingness to attempt a negotiated settlement along with the State of Colorado, the United States, and several other interested parties.

The parties commenced settlement negotiations which went on for years. These efforts culminated in the Settlement Agreement of December 10, 1986, which was approved both by the Department of the Interior and the Department of Justice. The principal purpose of Senate Bill 1415 is to provide the legislation required by the Settlement Agreement. At the time the Bill was introduced, there were a number of issues outstanding on which the Administration had not reached consensus with the other parties. Following the introduction of the Bill, the principal parties to the Settlement Agreement, including representatives of the Department of Justice and the Department of the Interior, met and ironed out their differences. The proposed changes to the Bill were referred to by Wayne Marchant, Deputy Assistant Secretary for Water and Science, Department of the Interior, in his testimony earlier today. Providing that the Bill is amended to reflect these changes, the Department of Justice supports the legislation. It will settle the long-standing reserved water rights claims of the Tribes and put an end to the costly litigation which holds little promise for an acceptable resolution of a century-old problem.

This concludes my written testimony. I shall be glad to answer any questions you may have.

STATEMENT OF
FRED V. KROEGER, PRESIDENT
SOUTHWESTERN WATER CONSERVATION DISTRICT OF COLORADO
DIRECTOR, ANIMAS-LA PLATA WATER CONSERVANCY DISTRICT
before the
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
and
THE WATER AND POWER SUBCOMMITTEE
OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
regarding
S. 1415
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987
WASHINGTON, D.C.
December 3, 1987

My name is Fred Kroeger. I am President of the Southwestern Water Conservation District of Colorado and a member of the Board of Directors of the Animas-La Plata Water Conservancy District. I am a life-long resident of southwestern Colorado and have been a member of the Board for over 30 years. I also served for 21 years on the Colorado Water Conservation Board.

The approval of S. 1415, together with continuing appropriations for construction of the Animas-La Plata Project, will change a dream into reality. The dream has been the ability of the people of southwestern Colorado to have the means to enjoy the beneficial use of the water resources of the Animas and La Plata Rivers. Farmers, ranchers, cities, towns, Indians and non-Indians have pursued this dream for over 50 years. Through good times and bad times, the Indian and non-Indian water users of southwestern Colorado have stuck together, and cooperated even though at times that cooperation was painful, particularly to our Indian friends who were repeatedly urged by tribes of a different viewpoint to fight rather than negotiate. The reality is construction of the

Animas-La Plata Project and a sufficient water supply for all in the San Juan Basin of southwestern Colorado and northwestern New Mexico. We in southwestern Colorado and northwestern New Mexico are entitled to have this legislation viewed favorably by this Committee and this Congress. That entitlement comes as a result of the many compromises and sacrifices that we as a district, as a region and as a state have made in times past when Congress was considering such legislation as the Colorado River Storage Act of 1956 and the Colorado River Basin Project Act of 1968. The 1956 ACT authorized the Animas-La Plata Project as a participating project and the 1968 Act authorized the construction of the project. We have stood in line with our Indian friends for a long time. We now feel that we have rightfully taken our place at the head of the line. The legislation you are considering, which we urge you to wholeheartedly support, will give needed Congressional approval to an agreement which has come about as a result of more than 30 years of close friendship and cooperation between the Southern Ute and Ute Mountain Ute Indian Tribes and the water districts of southwestern Colorado. We are proud of our achievement. We are aware of the bitter, divisive disputes in other parts of the west over Indian versus non-Indian water rights claims. We have overcome the temptation to have a cowboy and Indian war. What we achieved is neither a victory for the non-Indians nor a massacre for the Indians. It is a well-thought-out, reasonable, equitable and fair agreement which divides the use of the waters of the San Juan Basin in a manner which will be beneficial to all. S. 1415 is necessary legislation to implement these agreements. Your consideration and support will be appreciated.

Statement of

Larry H. Deremo
Dolores County, Dove Creek, Colorado

"FULL SERVICE" FARMER

MEMBER, BOARD OF DIRECTORS
Dolores Water Conservancy District

before the

SELECT COMMITTEE ON INDIAN AFFAIRS
WATER AND POWER SUBCOMMITTEE OF
THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
THE SENATE OF THE UNITED STATES

regarding

S. 1415
THE COLORADO UTE INDIAN RESERVED WATER RIGHTS
SETTLEMENT ACT OF 1987

December 3, 1987
Dirksen Senate Office Building

Introduction

My name is Larry Deremo. I was raised in Dolores County. Except for a tour of duty in the United States Army during the Korean Conflict, I have farmed there all of my life. Presently, my wife, Joan, and my two sons, Lyle and Rick, operate several farms. The principal crops we raise are pinto beans, wheat and alfalfa. My residence is in the small town of Dove Creek, Colorado, where I served several terms as town councilman. It is from those constituencies and perspectives that I was appointed to be a member of the Board of Directors of the Dolores Water Conservancy District in July 1986. By lease arrangement, I am a farmer in the, yet to be constructed, "Dove Creek Block of the full service area" of the Dolores Project.

On December 10, 1986, in the "Old Supreme Court Chambers" of the Capitol Building of the State of Colorado, a historic document was signed, which if the appropriate legislation can now be consummated in Congress, will put to rest a classic confrontation between Indian and Non-Indian neighbors in Southwestern Colorado. I know how each one of the participants to the negotiation, on behalf of their constituencies, toiled, deliberated, compromised, sacrificed and suffered to accomplish what I believed in the beginning was an impossible task. I would like to take this opportunity to thank each interest represented in this agreement for its diligence, its farsighted perception, and for its co-operative spirit. Absent those positive factors, we would not be here today asking for your assistance.

Historically, from a Non-Indian, farmer point of view I have always understood that not only was there a potential "cloud" over my water rights to the Dolores River, but water rights belonging to my friends and neighbors in the Mancos River Valley were in real jeopardy because that river farther downstream traverses the Ute Mountain Ute Indian Reservation.

I have also historically understood that as the Dolores Project was being planned, water which was originally intended to be delivered to Non-Indian farmers in the Dove Creek area, of which my land was part, was diverted to Ute Mountain Ute Indian land near Towaoc to satisfy Indian claims to the Mancos River.

Background

My testimony today is based on the following premises: **One,** that we have the potential through this federal legislation and appropriations along with two states' legislation and appropriation, coupled with local participation to solve longstanding water rights, natural resource and human need issues that are festering in my area; **Two,** that the legislation we are seeking here today is an integral part of a much larger picture, that being the completion of the Dolores Project, the implementation of the December 10, 1986 Colorado Ute Indian Water Rights Final Settlement Agreement, and the construction of the Animas-LaPlata Project via the June 27, 1986 Binding Agreement For Animas-LaPlata Project Cost Sharing; **Three,** the conviction that agriculture will remain the foundation of rural America's economy and in our area, agriculture requires developed water. My personal experiences and knowledge are based on the Dolores and Mancos River areas, therefore, my remarks will reflect that perspective.

Summary of Statement

I am testifying on behalf of this legislation because I believe it will allow us as taxpayers to commit our resources to a project that will benefit mankind rather than spend our money on expensive litigation. It will settle a longstanding dispute that has created doubt over our water rights and land values. It will provide the Ute Tribes the "wherewithal" to develop their resources, giving them the opportunity to establish a self-sufficient economy, thus benefiting us all. It provides much needed environmental enhancement for the Ute community of Towaoc. Finally, it is an important factor in allowing the construction of the Animas-LaPlata to proceed after these many years of delay.

Testimony

Settles potential costly litigation: My understanding of the issue of Federal Reserved Winters Doctrine Indian Water Rights is that the Ute Mountain Ute Indians have a legitimate claim to much of the virgin flow of the Mancos River, since that river runs directly through their land. It is also my understanding that the Utes claims to the Dolores River are less clear. However, as a result of the Akin v. District Court, the State Court was directed to quantify those claims. In the opinion of many learned, legal minds, that would require many years of litigation involving millions of dollars being expended by all of the parties. In addition to the time and money, this process would have two detrimental effects. **One**, the various factions would be cast into adversarial roles pitting Indian against Non-Indian neighbors, with the States of Colorado and New Mexico and the Federal Government being forced to choose sides. **Two**, in all probability the outcome would result in a winner and a loser, as compared to the negotiated settlement which would give us all the chance to be a winner.

Water from Dolores in lieu of Ute Claim to Mancos: While there is no documentation that verifies that the allocation of the expected average annual supply of 22,900 acre-feet of Dolores Project water from McPhee Reservoir is in lieu of the Winters Doctrine Claim the Ute Mountain Ute Indian Tribe has to the Mancos River, we all, Indians and Non-Indians alike, have verbally understood that to have been the case. There is documentation in the plans for the Dolores Project during the 1968-1972 period which shows 48,000 acres instead of the present 28,000 acres being irrigated in the "full-service" area of the Project. These plans also show no agricultural water for the Ute Mountain Ute Indian Tribe.

The Agreement provides, among other things, that when Dolores Project Water is delivered to the Ute Mountain Ute Indian Reservation, they will receive certain "project reserved water rights" and, in turn, will relinquish their Reserved Right Claims.

Animas-LaPlata Project a key to the basis of settlement: Others with much more background and expertise than I will give testimony explaining how the Animas-LaPlata Reclamation Project is an absolute key to this settlement Agreement. I wholeheartedly agree with that philosophy and totally support their testimony.

Dolores Project farmers & their relationship to this Legislation: Recent controversy regarding the value of the water from the Dolores Project going to convert dry agricultural land to irrigated land has received national media attention. There is such similarity between the Animas-LaPlata Project and the Dolores Project that we feel it is appropriate to address this issue in this testimony. In order to do this, I want to first give a brief history of the situation, then give the DWCD Board's perspective on that process, and lastly relate some figures and facts showing an assessment of our project today.

History: In 1977, one hundred seventy farmers in the "full service" area of the Dolores Project who had been farming as "dryland" farmers petitioned for water pursuant to the Water Conservancy District Act of Colorado, asking for an allotment of water from the Dolores Project. Based upon this guarantee of sale of water, the United States Bureau of Reclamation began construction of the Dolores Project in December of 1978. Delivery of water first began this summer, 1987. As this delivery was drawing near, some farmers began to have second thoughts. Their reasons were basically fivefold; One, the presently depressed national agricultural economy; **Two**, lack of understanding on how the initial water deliveries and associated cost would begin;

Three, posturing for a better deal with the District and the Government; **Four**, in the lapse of time between signup and water delivery, many had retired and are using income from their land as their nest egg; and **Five**, the natural social change a project like the Dolores brings. It will change a way of life.

I am, and the District is, sympathetic to their fears. We are making and will continue to make every effort to accommodate their concerns as long as we don't damage the integrity of the project. The project has certainly not injured their financial interest in any way at this point in time. In fact, if anyone has been damaged, it may be those farmers who will suffer a delay in their water delivery due to the 1988 appropriation cutback. Since we have many more water petitions than we have water to allocate, it might appear that the simple solution is just to take some water back. We would like nothing better, but the construction configuration at this late date simply does not allow that easy resolution.

The movement to "turn the water back", in my opinion, has a direct link to the movement in Durango to stop the Animas-LaPlata Project. Individuals involved in that effort are manipulators of the Dolores Project farmers. The movement began with a petition, signed by over one hundred individuals who represented 69 of the 172 separate landownerships. That petition was presented to then Congressman Mike Strang in March 1985. It simply stated that economics in the Dolores Project area had changed and the interested parties needed to sit down and talk. The language used made it easy for any concerned individual to sign. Subsequently, the DWCD Board met at a school in the "full-service" area, talked and listened and agreed to work with a self-appointed Full Service Farmers Committee (which the leaders of the opposition refused to serve on) toward a solution to their concerns. Many meetings, much thought, lots of involvement from the Bureau of Reclamation, including the Regional Director, resulted in a much better understanding of how the first water deliveries would be initiated. That process allayed many of the fears that full-water charge came with the first delivery and that all of the land would have to be developed at one time.

Subsequent to the first petition, there were two more petitions, each worded stronger, with less signers, until we got down to the fifteen landownerships represented on the "intent to sue" and the same fifteen landownerships who finally did sue.

Mixed in with the above mentioned process was the necessary adoption of the individual water petitions. The "asking for the water" had not been consummated, awaiting final design data from the Bureau of Reclamation. This process allowed the objectors another forum to be heard. The hearing allowed final water allocation for the full-service area to take place. Of the forty-one objectors, eleven stated explicitly that they wanted their water but under better terms. The hearing was held two weeks after construction allowed tentative water deliveries in the first block of land so the stage was set for actions to speak instead of words.

Dolores Water Conservancy District Board's perspective: The Board's response to those concerns has been based on several premises. First and foremost, we want to be as fair as possible to all project beneficiaries. In guiding the changes that the Dolores Project will bring, we must consider not only the concerns of those few full-service farmers that feel they don't want the water, we must also consider the rights of those individuals and entities that are committed to making the Dolores Project and its potentially enormous benefits a reality. We must consider the farmer who is ready to irrigate, the landowner who wishes to sell project land, the MVI farmers who are counting on supplemental water, the municipalities that are counting on a firm water supply for their futures, those people who will have the cloud removed from their water rights, those people who are investing in the future growth and prosperity of the area, and the Ute Mountain Ute Indian Tribe.

Our assesment of the concerns recently raised out in the dryland full-service area of the project is that a dominant force behind them is the very human characteristic of being resistant to change. Even changes recognized and viewed as positive are difficult to deal with. The nature of the development of agriculture over the last twenty years has led to fewer people owning and farming more of the land in order to make a living. Consequently, much of my generation had to leave the farm and go elsewhere to make their living. To switch from dryland farming to irrigated farming is like changing occupations. An irrigated farmer cannot farm as many acres as a dryland farmer. Our area will need new people coming in to fill this vacuum. The nintey-four percent who voted for the project back in 1977 voted for change. The Board and many landowners have realized that time is the best antidote to the difficult situations these changes are now bringing. Time will allow the opportunities brought by the Dolores Project changes to be maximized.

Many farmers took advantage of the petition-signing process to simply posture for a better deal from the District and the Bureau of Reclamation. The language of the petitions made it difficult for the board to separate those poker-faced business concerns from the few people who honestly have changed their minds about the value of the water to their personal situation. My opinion is that even some of the fifteen landownerships represented on the lawsuit would be mad if they lost their water.

The desire to avoid community conflict and to work out a local solution has made us slow to respond to the media compaign which has, in part, been instigated by the opponents to the Animas-LaPlata Project. Most of the farmers in the full-service area share our satisfaction with the progress being made in the project. We in the majority emphatically hope that the vocal minority on the lawsuit do not continue to have success in slowing down our appropriations.

The Project Today: As Board members, we came out of the water petition hearings with a strong conviction that by accepting all of the water petitions, we had acted decisively to protect a good project. Developments since the water began to flow this summer have reinforced this conviction. Even though water deliveries were uncertain and did not begin until July (a normal irrigation season begins in April), twenty-six out of eighty-three (31%) landowners in the initial blocks have already installed forty-eight irrigation systems serving approximately 2,000 acres. Some of the very farmers who objected to the District's acceptance of the water petitions at the July hearing have Dolores Project water irrigating their farms today. These positive developments will undoubtedly pick up momentum with the expectation of a firmer and earlier supply of water next year. We are confident that fifty to sixty more systems will be installed in the spring of 1988. The irrigation system planning that we are aware of could lead to the Cahone Block being fifty percent developed by next year. These optimistic financial actions should speak much louder than the national media attention headlining the pessimistic views of a much smaller minority.

Recent land sales demonstrate that not only is land under the irrigation project considerably more valuable than adjacent dryland, there is much more interest in the watered areas. Sales indicate that land with a water allocation are selling for $300 to $550 an acre while dryland is bringing $225 to $325.

I have an acquaintance who purchased and is irrigating project land who feels that he can have his land and irrigation equipment paid off in five years.

The silent majority of project landowners that have been patiently waiting for water have been slow to realize the damage that the fifteen landownerships and their lawsuit have done. The cut in the 1988 appropriations from $22 million to $11 million has just begun to sink in. There is growing talk of a counter lawsuit in response to the damage that this vocal minority has done.

What project farmers are responding to is an opportunity to make a transition to irrigation that promises to ensure an agricultural future for an area that has an uncertain future as an exclusively dryland area. The speed with which irrigation systems are being installed during this difficult time for agriculture all over the nation is a strong testimonial to the foresight of our community in its advocacy of the Dolores Project. These actions are proof that Congressional response to that foresight by approving and funding the Dolores Project was correct. The actions speak to the need for similar opportunities in the area served by Animas-LaPlata.

Tribal Water Resource Development: I have talked about the benefits irrigation will continue to bring to the Dolores Project drylands. I have also made reference to how the overall settlement will remove the cloud on the Non-Indian water rights throughout the area. I would like to conclude by talking about the benefits to the Ute Mountain Ute Indian Tribe.

I see evidence of the fact that the Ute Mountain Ute Indian Tribe is serious about developing their water and land resource to create a permanent, sustained and agriculturally-based economy for their people. They are developing a demonstration farm, which will give the Tribe the capability, the experience, the technical ability and the "know how" to develop their Dolores and Animas-LaPlata Project waters into a viable long term economy. The Development Fund is needed to put to practical use the knowledge and experience gained on the demonstration farm as the Tribe develops its "project waters".

Area wide economic development: The Ute Mountain Ute Indian Tribe is an integral and an important part of the economic scheme in Southwest Colorado. It is possible through the wise development of its water and land resources for the Tribe to greatly expand and broaden its base of livelihood. Therefore, any factor that affects the Indian economy directly affects not only Montezuma and Dolores Counties, but all of Southwest Colorado, indeed all of Colorado. A thriving viable sector of the economy tends to "rub off" on other sectors, therefore, the Non-Indian community has much to gain from a healthy Tribal economy, which the requested Development Fund will foster.

Enhancement of the Towaoc Environment: Knowing that there are at least five to ten truckloads of water per day being hauled from Cortez to Towaoc. We know that this type of water supply only allows for the bare necessities of life. Certainly it does not allow for any lawns or landscaping. It dictates a bleak environment, one without any of the amenities of life. Water is the key to changing that environment, which from my point of view, the Utes have tolerated far too long. No where can we find a more vivid example of how a water project and the use of its waters can truly enhance the environment than at Towaoc.

Conclusion

The Dolores Project has created a common bond between the Ute Mountain Ute Indian Tribe and us Non-Indian neighbors that have significantly improved relations and promises mutual prosperity in the future. I trust that the Animas-LaPlata Project will do the same for the Southern Utes and their region. I would like to conclude by urging the passage of this legislation and also urging that the appropriation dollars will follow.

Thank you for the opportunity to testify today.

Statement of

Dudley Millard
Montezuma County, Cortez, Colorado

LUMBERMAN

NON-INDIAN WATER USER
Montezuma Valley Irrigation Company System

DIRECTOR, BOARD OF DIRECTORS
Dolores Water Conservancy District

before the

SELECT COMMITTEE ON INDIAN AFFAIRS
WATER AND POWER SUBCOMMITTEE OF
THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
THE SENATE OF THE UNITED STATES

regarding

S. 1415
THE COLORADO UTE INDIAN RESERVED WATER RIGHTS
SETTLEMENT ACT OF 1987

December 3, 1987
Dirksen Senate Office Building

Introduction

I am Dudley Millard, born and raised on the Dolores River above the present site of the McPhee Reservoir and Dam. Water and the use of water in the Dolores River have always held and will always hold a special meaning to me. Presently, I have a small farm under the Montezuma Valley Irrigation system and work in the lumber industry.

I have been Director on the Board of the Dolores Water Conservancy District since last December; a board member of Montezuma Water Company, a private non-profit corporation whose purpose is to deliver culinary water to much of this rural area; a member of the Public Lands Advisory Council to the San Juan National Forest and President of the Colorado Timber Industry Association.

Summary of Testimony

As a director on the Board of the Dolores Water Conservancy District, I would like to make a statement of the District's involvment with the Ute Mountain Ute Indians water rights settlement.

Testimony

Originally the Dolores Project was designed to furnish both irrigation and M & I water in Montezuma and Dolores Counties, excluding the Ute Mountain Indian Reservation, since the Utes held no claim to the Dolores Project.

Soon after the original planning, the Ute Mountain Ute Indians emphasized the fact that by the Winters Doctrine the tribe indeed held claim to all of the Mancos River. Today the Mancos River is being used almost entirely by Non-Indian users upstream from the tribal lands.

The Dolores District then went an extra mile to resolve the situation to both our neighbors on the Mancos Valley and Indian Reservation. The project waters of the Dolores River were reallocated, taking 22,900 acre-feet away from the full-service farmers in the Dove Creek and Cahone areas and giving it to the Ute Indians. This, in my opinion, was a sacrifice above and beyond any call of duty by the farmers since the Tribe had no claim to the Dolores River water. The water is lost forever by our farmers so our neighbors on the Mancos River may keep theirs and the Indians be furnished with water.

The project has been totally redesigned and partially constructed to implement the change in water deliveries from the District farmers and taxpayers to the Tribe.

Conclusion

I am sincerely urging this committee for a speedy and noncontroversial passage of S. 1415. This agreement is outstanding that it will settle a very delicate situation without a lengthy litigation.

It is probably by far the most cost effective and long term beneficial solution to the area. The cost of completing the Dolores Project and the Animas-LaPlata will, in my opinion, cost less than an outright buyout of the Indians.

Lets consider each way briefly. The completion of the projects will put in place a long term asset in the community, greatly adding to the economic base of the area, the State and the United States. The Indians will have the benefit of long term economic base also. As a business man of forty years, this is the only rational way to go.

The other route would be years of litigation and cash settlement to the Indians; this way could actually cost the taxpayers more. The Indians would have only money which could trickle away without any eternal benefit to their people and the white man receives nothing for their dollars spent.

I can't see any good reason for opposition to this bill, so I will leave this to the good judgment of your committee, the Congress and the President to get an outstanding and good piece of legislation enacted and fund the projects, so the Indian Water Rights agreement can become a working reality.

STATEMENT OF
TOM COLBERT, COUNTY COMMISSIONER
MONTEZUMA COUNTY, COLORADO
MEMBER, MANCOS WATER CONSERVANCY DISTRICT
before the
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
and
THE WATER AND POWER SUBCOMMITTEE
OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
regarding
S. 1415
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987
WASHINGTON, D.C.
December 3, 1987

My name is Tom Colbert, and I am here today representing the Mancos Valley water users. The people in the Mancos Valley have a larger stake in this legislation than do any other non-Indian group of citizens. Over eighty years ago, the United States Government opened up the Mancos Valley for homesteading, and for that entire period of time the Federal Government has allowed a conflict to develop over reserved Indian water rights by encouraging non-Indian water development and by overlooking Indian water development.

The Ute Mountain Ute Indians have water rights which are senior to those of the non-Indian water users in the Mancos Valley. We non-Indians have made investments in good faith to put the water which our grandfathers first diverted to beneficial use. However, since 1972, when the Federal Government first filed claims for Indian water rights in the San Juan Basin of Colorado, there has been a great uncertainty about the validity of our water rights versus those of the Indian rights. We face the loss of our investment and our livelihood to senior Indian rights. It was for this reason that we urged a negotiated settlement of the water rights disputes. Litigation clouds non-Indian rights, prevents development, adversely impacts real estate values, and causes hostility between Indian and non-Indian neighbors. The negotiated settlement which we have successfully pursued, as embodied in the 1986 Colorado Ute Indian Water Rights Settlement Agreement, allowed us to adopt a flexible process for resolving the disputes between Indians and non-Indians. The Agreement recognizes the rights of the non-Indians to continue to use their water as they have in the past. The Ute Mountain Ute Indian Tribe was willing to subordinate their senior rights to our vested rights in return for other valuable considerations, both in terms of money and water. This type of flexibility is not possible in a litigation setting.

We in southwestern Colorado do not want to have a water war which will not benefit either side. We recognize and believe that the Indians, whose rights are senior to those of most non-Indians, have been deprived of opportunities in economic gain which could have come from being able to put the water to which they have rights to beneficial use. At the same time, the Indian tribes have recognized from the beginning the need to cooperate and recognize the good faith investments and long-term utilization of the water by their non-Indian neighbors. Passage of this legislation will insure that the Indian tribes have every opportunity to maximize their economic benefits and fulfill their goal of becoming viable, self-sufficient and self-sustaining communities. The legislation will fulfill the Federal Government's trustee obligation to the tribes and avoid massive potential damage claims for breach of trust responsibility on behalf of the Indians, and also potential claims for compensation for lost rights from non-Indians.

Both the Indians and non-Indians in southwestern Colorado are entitled to have their water rights determined with certainty. The certainty will facilitate economic growth both on and off the reservation, and will allow both Indian and non-Indian to continue to live side-by-side as friends and neighbors, not as constant competitors for a too short supply of water. This negotiated settlement agreement is unique to our situation in southwestern Colorado. We believe, however, that it could be used as a possible model for other Indian versus non-Indian water conflicts in the West. We would certainly recommend it to the people in other states as being preferable to the heart-wrenching uncertainty of litigation. We ask for your support in helping make the agreement become a reality by approving S. 1415.

Respectfully submitted

Tom Colbert, County Commissioner,
Montezuma County; Member, Mancos
Water Conservancy District

STATEMENT OF JAMES C. DECKER
BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS
AND THE WATER AND POWER SUBCOMMITTEE
OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

WASHINGTON, D.C.
December 3, 1987

Mr. Chairman and Members of the Committee:

My name is James C. Decker. I am a professor of political science at Fort Lewis College in Durango, Colorado, and a member of Taxpayers for the Animas-La Plata Referendum, a Durango-based organization opposed to the $379-million Animas-La Plata reclamation project.

The proponents of the Ute Indian Settlement bill - S. 1415 - are here before this committee today to tell you that it requires a billion dollars to settle the water-right claims of two small Indian tribes in southwest Colorado. They claim that settling these claims through construction of the Animas-La Plata water project will avoid costly litigation, bring harmonious relations between Indian and non-Indian, and promote economic well-being in the area.

None of thse claims bear up under scrutiny as my testimony will show.

This bill will cause as much, or more, litigation in state and federal courts as it will avoid. Already objections have been raised that the leasing provision in the bill violates the Colorado River Compacts. Knowing how zealous Western water interests are in guarding their rights under these compacts, we predict this section of the bill will wind up in court. The bill creates a "project reserved right," which attempts to finesse through legislation unanswered questions about the nature of Winters Doctrine water rights. This new water right will also inspire court challenges. Furthermore, the bill awards a Winters Doctrine right for water not appurtenant to a reservation, a dangerous and unsettling precedent. The cost of these potential legal challenges must at least equal the cost of litigating the actual Ute Indian claims.

We also do not see how this settlement can bring harmony. First, the composition and structure of the project coordinating committee, as described in the project's repayment contract, is impossible. Eleven members, each representing separate entities in Colorado and New Mexico, plus three separate Indian tribes, must come to unanimous agreement. Second, the 1986 Agreement in Principle, which this bill will ratify, contains a provision that the entire settlement is moot if the project does not begin construction in 1988 and is not completed in 12 years. Should just one party balk -- if, for instance, the Durango voters refuse to approve a local bond issue in the eleventh year of construction -- the whole deal is off. Or if the State of Colorado or the United States fail to appropriate obligated construction money in a timely way, new negotiations to settle Indian water rights may have to be initiated; local squabbles over water will resume.

Thus, the crux of future harmonious relations between Indian and non-Indian in the San Juan Basin will depend on the effects of construction of this project. The Dolores project got underway in 1978 at an estimated cost of $186 million. The locals had high hopes for it as they had been promised it would boost farm income, bring jobs, increase retail sales, and settle Ute Mountain Ute claims for water.

To date, it has delivered none of these promises. The actual cost of constructing the project has risen to $452 million, tripling local indebtedness. Forty-one farmers are now suing to get out of their water contracts for fear of losing their farms because economists at the Colorado State University concluded, after an eleven-year, on-farm study, that no crop could be grown profitably using project water because of the short growing season, changing market conditions, and high investment cost to utilize the water. Only 10 to 15% of the promised construction jobs in the project went to locals; the rest were filled by transient, union labor. Sales-tax receipts actually dipped during the peak construction period, triggering a fiscal crisis in Cortez. This year the economic outlook is bleak. Montezuma County had the highest unemployment rate it has had since the Great Depression, with one of every five workers unemployed.

And the project didn't even settle the Ute Mountain Ute claims! The very year the project got underway, promoters of Animas-La Plata used the same claims again to justify that project.

Based on the failure of the Dolores project to produce an economic boon, we think it absurd to claim that the Animas-La Plata, which is even costlier, will promote economic well-being in the area and thus harmonious relationships between Indian and non-Indian. It is more likely that it will produce enmity.

And now, in what looks to us like a desperate attempt of the proponents to convince Congress to fund the Animas-La Plata, the Colorado Forum is claiming that it will cost more not build it than to build it. The Forum, a private business consortium, claims $535 million in damages for 80 years of lost income due to "denial of water." This is far more than the tribes themselves asked for in the negotiations on the Animas-La Plata project. Originally, the Ute Mountain Utes claim was for $100 million for the development fund and the Southern Utes asked for $35 million. These figures were adjusted downward to $60.5 million; $40.5 million for the Ute Mountain Utes and $20 million for the Southern Utes. We agree with these figures in that they represent a fair and reasonable outcome of negotiations between the Indian and non-Indian entities involved.

We also have no quarrel with the entitlements to Indian water resulting from the negotiations, except the labeling of certain water as Project Reserved Water. We do not agree that the Animas-La Plata is the best way to provide those water supplies.

One of the positive results from the negotiations is that both water and monetary claims are quantified. But actually providing the water can be accomplished in a variety of ways more consistent with lower costs and the Winter Rights Doctrine. The Southern Utes' water should be supplied from the Animas River with on-reservation facilities. The present Phase I of the project includes no such on-reservation facilities. The Ute Mountain Ute water should be supplied from the existing Dolores River project as originally contemplated in the construction of that project. These alternatives would bring income and water to the reservation in less time.

One of the puzzling questions resulting from the present negotiated settlement is why the Indians have agreed to postponement of facilities, given the fact that they have stated they want water to develop their natural resources. Tribal representatives claim that their demands are specific to the building of the Animas-La Plata project. Their reasons are that non-Indian economic development is necessary to their own development and is necessary to achieve harmony between Indian and non-Indian.

As I have pointed out in this testimony, harmony is not likely to happen with the present Animas-La Plata project. In any case, whereas we agree that the tribes are entitled to claim their own demands, they are not similarly entitled to assert the claims of the non-Indian. These non-Indians are able to do for themselves through a variety of smaller, independent projects; that is, Durango can go forward in a timely way with its own plans, as can San Juan County, New Mexico, and for equivalent costs. So can the Ute Mountain Utes.

At any rate, there is no need to do what this bill purports; that is, to solve a 60,000 acre-feet problem with a 280,000 acre-feet reservoir at an additional public expenditure of $379 million. We urge a "no" vote on this legislation.

Testimony of
John S. Williams, Ph.D. - American Rivers
Before the Indian Affairs Committee
United States Senate
Washington DC
December 3, 1987

Re: S 1415 - The Colorado Ute Indian Water Rights Settlement Act of 1987

Mr. Chairman and Members of the Committee:

I submit these remarks as a Board Member of **American Rivers**, the nation's principle river-saving organization, a Washington-based national non-profit group with 9,000 members nationwide. American Rivers advocates a balanced policy which stresses preservation of the highest quality rivers while recognizing the need for development of some water resources for a variety of economic needs.

These comments address the environmental impacts of the proposed Animas La Plata project, a cornerstone of the settlement agreement, which poses grave consequences for the Animas River and the San Juan River two of our outstanding rivers. American Rivers opposes the Animas La Plata project, as presently designed.

The Animas La Plata project, ostensibly a water storage project primarily for irrigation, is in fact a $586 million dollar river dewatering project. Up to 500 cubic feet per second (cfs) of water will be diverted from the river which at summer flows will leave a very low 225 cfs in the river during part of the high summer tourist season. The Animas is the third most heavily rafted river in the state of Colorado, according to the Western River Guides. A premiere recreational boating and fishing river will become a desiccated ditch.

Furthermore, summertime flows of the free flowing Animas River provide the majority of water on the San Juan River through the Goosenecks section. Water removed from the Animas will curtail and degrade recreation on the San Juan River. The Western Raft Guides consider the San Juan the second most popular floating river in the entire Southwest, after the Colorado itself. The San Juan River is a river on the Nationwide Inventory of Rivers, prepared by the National Park Service.

Proponents of the project state that the river will have minimal environmental damage because it does not dam the river. I wish to set the record straight. This project is environmentally destructive. The dewatering of a river may be even worse than the damming of a river.

Indications of the environmental destruction to be wrought by this proposed project are found in statements by environmental groups. American Rivers has named the

Animas River as one of the Ten Most Endangered Rivers, endangered by the Animas La Plata dewatering project. Its press release on the Animas River is attached. The 1987 National Conference on Rivers passed a unanimous resolution, (its only resolution) calling for stopping Animas La Plata. A copy of this resolution is also attached. Other environmental groups have testified against the project, both here and before the House of Representatives in September of this year. The environmental community is strongly opposed to this project.

The major environmental degradation of Animas La Plata is upon the flows of the Animas and San Juan Rivers, with consequent loss to fishing, floating, and wildlife. However, there are other negative effects that will be mentioned only briefly:

> The Animas La Plata project will increase the salinity of the Colorado River. Our treaty obligations with Mexico require us to decrease that salinity, not increase it. Quantification of the increased salinity is provided in the Environmental Impact Statement, and is estimated to add a total of 17.9 mg/l as measured at the Imperial dam on the Colorado River downstream. Bureau of Reclamation studies conclude that such salinity causes economic losses estimated to total $6 million annually. The negative costs associated with the increased salinity are not attributed as costs to the project.
>
> The Animas La Plata project is an immense consumer of electricity. The pumping 1000 feet uphill of 100,000 acre feet of Animas River water for irrigation will require additional generation of an amount of electricity sufficient to meet the needs of a community of 63,000.
>
> The Animas La Plata project will build its water storage not behind a dam on the Animas River, but behind a dam in the Bodo Wildlife Preserve, turned over to the State of Colorado by the Nature Conservancy for permanent protection. This preserve has been described as outstanding elk habitat and the site of rare species of high altitude wetlands vegetation. Only 4000 of the area's existing 7,000 acres will be replaced, and the location and quality of this replacement land is not known. According to the Environmental Impact Statement, "mortality [of elk] will occur". The project area also contains the endangered species of bald eagles and peregrine falcons.
>
> The high metals content of the water pumped to the Bodo preserve reservoir will be further concentrated by evaporation. The effects of this metals content on proposed recreation in the reservoir or in municipal or agricultural use of the water are not adequately addressed in the Environmental Impact Statement.

Primarily, the project will seriously destroy the outstanding quality of two of the nation's most outstanding river resources. My comments will focus on the consequences on the Animas River and the San Juan River.

Effects on the Animas River (Durango to Bondad)

The Animas River is not just any ordinary river. It is one of the great rivers of the west. The Animas River has been declared by American Rivers as one of the nation's ten most endangered rivers. It is the anchor of a major rafting industry in Durango. And finally, it is the last major predominantly free flowing river of the entire Colorado River system. Surely we should hesitate before we dewater this river.

What does the proposed pumping schedule mean for the Animas River? If you were to take a typical flow of water through the Animas River on the first of August of 750 cfs, and remove 500 cfs of water, you would be left with 250 cfs in the river, in consequence removing two-thirds of the water. Such a pumping schedule would make the river unrunnable by rafts whenever the flow in the river fell below 1100-1200 cfs. Project proponents claim that the pumping schedule would be modified during the early years of the project to protect rafting, but such claims appear to have little standing and may be inconsistent with other agreements negotiated in the elaborate complexities of Animas La Plata.

Animas La Plata would shorten and curtail the rafting season in the second half of July and the first half of August. It is noted that the rafting industry, which is currently healthy and vibrant, would be curtailed sharply if not destroyed by the summer time dewatering of the river. This is the only river in southwestern Colorado that can now be run most years from early spring until early or mid-August. The local rafting industry could be virtually eliminated by the project.

River guide books to Colorado provide excellent descriptions of the popular run on the Animas River below Durango. A few yards upstream from the proposed massive pumping structure is Smelter Rapid. Smelter Rapid requires skill; it is not dangerous, but it is exhilarating. I can't imagine canoeing down this rapid in an open canoe knowing that a few yards downstream lurks the dewatering structure pumping massive gulps of water out of the river.

As one moves downstream below Durango, the rapids on the Animas become more mellow, appropriate for the intermediate canoeist. Floating down the river, one looks back at a panorama of high snow capped mountains, the La Plata range. Raft guides report frequent sighting of eagle.

By early July, every other river in Southwest Colorado has insufficient flows for floating. The Dolores is dammed by the McPhee project. The Piedra, the Pine, the San Juan have low flows. The Animas, with a rich source of water descending from the snows above Silverton alone provides continuous flows for the river runner.

Effects on San Juan River (Utah)

The San Juan River is described by members of the Western Raft Guides as the second most popular river in the southwest. Furthermore, it is a preeminent river for private float trips. (Most persons who descend the Grand Canyon do so in commercial rafts). Permits for the popular run must be obtained from the Bureau of Land Management in Monticello Utah. The river is so popular that plans to run the river must be made far in advance.

The 134 miles of the San Juan River are prominently listed as a component of the Nationwide Inventory of Rivers, compiled by the National Park Service. With the passage of Public Law 88-29 and Public Law 90-542 (the Wild and Scenic Rivers Act), Congress called for preparation and maintenance of a continuing inventory and evaluation of the outdoor recreation needs and resources of the United States. In partial fulfillment of these mandates, the National Park Service prepared the nationwide inventory of significant free flowing rivers.

The inventory provides input for informed decisions on utilization of the nation's river resources for purposes of recreation, water supply, and irrigation, and serves to identify potential water use conflicts prior to a sizable commitment of private or public funds. The Colorado plateaus were described as having the fewest remaining free flowing rivers.

Despite the fact that the San Juan was on the Nationwide inventory, the Bureau of Reclamation did not address the impacts of the Animas La Plata project on the San Juan River.

Water diverted from the Animas River in Durango will lead to the dewatering the San Juan River through the Goosenecks section down stream below the town of Mexican Hat in Utah. This immensely popular stretch can in good water years be run all summer, thanks primarily to the flows of the free flowing Animas River. Following the construction of the Navajo Dam on the San Juan River, the goosenecks section is dependent in summer on flows of the Animas to make it a recreational river. Animas La Plata will curtail the season for floating the San Juan and degrade the experience when it is floatable.

Stewart Aitchison describes the river in his *Naturalist's San Juan River Guide*:

> *Melting snows high in the majestic peaks of the San Juan Mountains of southwestern Colorado give rise to a major tributary of the Colorado River, the San Juan. The San Juan River flows south into New Mexico then briefly back into Colorado before turning westward into Utah. Once in the slickrock country of southeastern Utah, the river becomes entrenched in a series of deep, awesome canyons as it meanders to its death in the great eastern arm of Lake Powell.*
>
> *The spectacular Goosenecks of the San Juan are a familiar sight to southwestern travelers; and this section of the Colorado Plateau is particularly rich in prehistoric legend and fact.*

> *From Bluff Utah, to Grand Gulch, the San Juan is still a wild, beautiful river. So dip your paddle into the muddy chocolate or sometimes clear amber waters; let your spirit soar over the canyon; and drink in the elixir of desert sun and glowing rock.*

Stewart Aitchison's book is only one of a number of guides that has been written on this one river alone. Don Baars has prepared a *Guide to the Geology of the Canyons of the San Juan River* (1973). Baars and Gene Stevenson collaborated on *San Juan Canyons: a River Runner's Guide.* Stewart Aitchison wrote the Naturalist's guide quoted above. The Bureau of Land Management has prepared a description of the river that it gives out to those requesting river permits. In addition, detailed descriptions of the San Juan river are found in Doug Wheat's *Floater's Guide to Colorado (1983)* and *Rivers of the Southwest* (1982) by Fletcher Anderson and Ann Hopkinson.

I have paddled with my wife and daughter by canoe the San Juan from Mexican Hat through the Goosenecks. To paddle this river in a canoe is an unparalleled experience. The Animas La Plata project does not propose to inundate the San Juan...it will desiccate it.

Conclusion

At a time when the President's commission on the Outdoors has called for an increase in river recreation facilities, this project attempts abridges an outstanding recreational resource, not only on the immediate Animas River, but also with negative effects on recreation downstream on the San Juan River.

I ask this committee to find alternatives to the Animas La Plata project. I feel confident that there are alternatives to the project that would provide water required for the Indian tribes which would be far less costly to the environment. The quantity of water to be taken from the Animas River for delivery to the tribes is modest, even within the framework of the settlement agreement. These requirements alone do not pose the degree of destruction to the river that would be consequent to the operation of the proposed Animas La Plata project.

Given the proposed Animas La Plata project as presented, American Rivers has no other course of action but to strenuously oppose the project. We support the sentiment of the resolution passed by the National Conference on Rivers:

> *that alternatives to achieve just and equitable access and delivery of water for the Southern Utes and Mountain Utes Indians be sought and funded.*

American Rivers

December 3, 1987

Senator Daniel K. Inouye, Chairman
Senate Select Committee
on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Senator Inouye:

We, the undersigned, recommend against the passage of S. 1415, the Animas La Plata Project, and wish to support the testimony of John Williams on behalf of American Rivers, Inc.

This project will have serious adverse effects on the environmental quality, fish and wildlife, and recreation resources of the Animas River and will have the downstream effect of potentially destroying one of the nation's finest recreational canoe and rafting rivers, the San Juan.

This would not only affect the resource qualities of these two rivers, but would also take away much of the recreational boating and outfitting business on the San Juan, a business on which local outfitters depend for their livelihood.

For these reasons we urge you to consider alternatives to this environmentally unsound proposal and we respectfully request that this letter become part of your December 3, 1987 hearing record.

Sincerely,

Kevin J. Coyle
American Rivers

Hope Babcock
National Audubon Society

Peter Skinner
American Whitewater Affiliation

David Conrad
Friends of the Earth

Sheri Griffeth
Western River Guides Association

Brent Blackwelder
Environmental Policy Institute

801 Pennsylvania Ave., S.E.
Suite 303
Washington, D.C. 20003
202-547-6900

NATIONAL CONFERENCE ON RIVERS

PROCEEDINGS OF APRIL 4, 1987

FORMAL RESOLUTION on the ANIMAS LAPLATA PROJECT.

The following resolution was moved, seconded, and approved unanimously:

WHEREAS the Animas LaPlata Project has a negative benefit to cost ratio;

and **WHEREAS** the Animas LaPlata Project will significantly dewater the river during the summer and other low water periods;

and **WHEREAS** the Animas LaPlata Project will greatly harm river recreation, both floating and fishing, below Durango, and threaten the livelihood of rafting companies;

and **WHEREAS** the Animas LaPlata Project will provide subsidized water for irrigation that is costly and potentially threatens the livelihood of the very farmers who must pay water and water distribution costs;

and **WHEREAS** the Animas LaPlata Project will destroy the Bodo wildlife preserve;

the assembly of the National Conference on Rivers hereby requests

- that all funding for the project cease;
- that alternatives to achieve just and equitable access and delivery of water for the Southern Utes and Mountain Utes Indians be sought and funded.

Passed unanimously this 4th day of April, 1987.

John Skelton Williams Jr.
1623 Lanier Pl NW
Washington DC 20009

December 5, 1987

Select Committee on Indian Affairs
United States Senate
Washington DC 20003

Dear sir/madam:

re: Testimony on S. 1415 - December 8, 1987.
Colorado Ute Indian Water Rights Settlement Act

Enclosed are attachments to my testimony in opposition to the Animas La Plata project as currently planned, a central feature of the proposed bill. I request that these items be included in the record for the hearing:

1. July 29, 1986 letter from Dale Vodehnal, Chief of the Environmental Assessment Branch, the Environmental Assessment Branch, to Rick Gold, Project Manager for the Bureau of Reclamation, with regard to NEPA compliance of the Animas La Plata project.

2. July 29, 1986 letter from Dale Vodehnal, chief of Environmental Assessment Branch, to Len Matis, Chairman, Taxpayers for the Animas-La Plata project, asking that any efforts regarding future EIS compliance be communicated to his office.

3. July 29, 1987 letter from Kerrigan G. Clough, Assistant Regional Administrator for Policy and Management, the Environmental Protection Agency, to Peter Carlson, Environmental Policy Institute regarding a "Special Report" on environmental impacts of the project that was to be evaluated by EPA. Said report has never been completed.

4. A May 1987 brief on the San Juan River studies with regard to the presence of the endangered Colorado squawfish found in the San Juan River below its confluence with the Animas River near the town of Shiprock and raising the issue of the importance of the San Juan to the recovery of the Colorado River endangered fishes.

Thank you for including these in the record of my testimony before the committee on December 8, 1987.

Sincerely yours,

John Williams

John S. Williams Jr.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
ONE DENVER PLACE — 999 18TH STREET — SUITE 1300
DENVER, COLORADO 80202-2413

JUL 29 1986

Ref: 8PM-EA

Rick Gold, Project Manager
P.O. 640
Bureau of Reclamation
U.S. Department of the Interior
Durango, Colorado 81302

RE: NEPA Compliance for the revised
Animas-LaPlata Project

Dear Mr. Gold:

Since the proposed Department of the Interior agreement on the Animas-LaPlata Project is about to reach a conclusion, our office would appreciate being kept informed on any possible new activities you may perform under the National Environmental Policy Act for the project.

As you will recall, the U.S. Environmental Protection Agency had some environmental concerns with the proposed Animas-LaPlata Project as it was formulated and described in the final Environmental Impact Statement in 1979. EPA's primary concerns were the environmental and economic consequences of water quality changes and the environmental advantages of water conservation. We would appreciate being kept informed as to any Bureau of Reclamation action on the issues raised by EPA at that time and whether or not any project components would be substantially altered that could effect the environmental impact of the proposal. It is not clear to our office what is the current status of the project and its associated NEPA compliance. Please consider whether: 1) the project remains unaltered from the previous design and any affects such changes would have upon the environment, 2) the geologic assessment work of the proposed Ridges Basin Reservoir to occurr this fall will identify the same project features that were in the original 1979 EIS, 3) the need for revised legislation for project implementation.

Please contact Mr. Weston W. Wilson of my office at FTS 564-1703 or 303/293-1703 as these project actions move forward.

Sincerely,

for
Dale Vodehnal, Chief
Environmental Assessment Branch

cc: Gordan Lind, Bureau of Reclamation, Salt Lake City
Sylvia Caberera, Bureau of Reclamation, Washington, D.C.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
ONE DENVER PLACE — 999 18TH STREET — SUITE 1300
DENVER, COLORADO 80202-2413

JUL 29 1986

Ref: 8PM-EA

Lew Matis, Chairman
Taxpayers for the Animas-LaPlata Project
2914 Aspen Drive
Durango, Colorado 81301

Dear Mr. Matis:

In May, 1986, you wrote to the Regional Administrator of the U.S. Environmental Protection Agency (EPA) asking that EPA consider the status of previous EIS actions regarding the proposed Animas-LaPlata Project. We have been informed that there are remaining negotiations to take place with the Ute-Mountain and Southern Ute Tribes and that there may be a need for reauthorizing legislation on this project.

Enclosed is a letter to the Bureau of Reclamation office in Durango asking that any efforts regarding future EIS compliance be communicated to our office. We will in turn let you know of any action in this regard.

Sincerely,

Dale Vodehnal, Chief
Environmental Assessment Branch

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VIII
999 18th STREET—SUITE 500
DENVER, COLORADO 80202-2405

JUL 2 9 1987

Ref: 8PM-EP

Peter Carlson, Director
Water Resources Project
Environmental Policy Institute
218 D Street, S.E.
Washington, D.C. 20003

Dear Mr. Carlson:

This is in response to your letter of July 6, 1987, about compliance with the National Environmental Policy Act by the Bureau of Reclamation for the proposed Animas-LaPlata Project near Durango, Colorado. As you know legislation is pending before Congress to provide funding for the project in a somewhat different form than that analyzed in the final environmental impact statement (EIS) issued in 1979. During the 1979 EIS process, EPA raised concerns about the effect upon salinity due to stream flow depletion and irrigation return flows and the environmental advantages of additional water conservation. The possibility that the heavy metal concentrations in the Animas River from mining in the headwaters affecting the project is also of concern to EPA. Since the final EIS, the town of Durango has located a sewage outfall in the area and the Department of Energy issued a final EIS on its proposed remedial action for the Uranium mill tailings pile adjacent to the proposed Animas River intake structure.

The Bureau of Reclamation is developing a "Special Report" on the project to be released shortly which may address the above concerns. EPA will evaluate this report and the project changes from our perspective to determine if we have any concerns from a NEPA compliance standpoint. It is the Bureau's primary responsibility to determine compliance with the National Environmental Policy Act regarding any changes or updating of environmental impacts since the 1979 final EIS.

Please contact Mr. Weston Wilson of my staff at 303/293-1703 if we can be of further assistance in this matter.

Sincerely,

Martha Nicodemus/for
Kerrigan G. Clough
Assistant Regional Administrator
for Policy and Management

cc: Rick Gold, Bureau of Reclamation, Durango
Harold Sersland, Bureau of Reclamation, Salt Lake City

BRIEF
San Juan River Studies

The State of New Mexico reported capture of 2 adult Colorado squawfish in May 1987 (560mm and 790 mm) from the San Juan River in New Mexico (near Shiprock, and near the confluence of the Mancos River). This is the first reported capture of Colorado squawfish in New Mexico in recent times; only 2 Colorado squawfish have been captured in the San Juan River since 1962.. This report follows the capture of a Colorado squawfish and several adult (ripe) razorback suckers in the San Juan arm of Lake Powell. New Mexico, Utah and BR will be conducting further endangered fish surveys of the San Juan River throughout the field season.

This finding has potentially significant implication for:

1. the Recovery Implementation Program - currently New Mexico does not participate in the UCRB Coordinating Committee or the Recovery Team because they have always contended that there were no Colorado River endangered fishes in New Mexico. If it is determined that the San Juan has a significant population or recovery potential, there may be substantial pressure for New Mexico to get involved.

2. consultation on Animas LaPlata Project - BR has already requested a meeting to determine how the Service will view Section 7 consultation in light of the finding.

In October 1987, the Service, BR, Utah, and New Mexico are scheduled to review the field data collected this summer and make recommendations on the importance of the San Juan to the recovery of the Colorado River endangered fishes. At that time BR will also expect the Service to take a position on the Animas LaPlata project consultation.

Working for the Nature of Tomorrow.
NATIONAL WILDLIFE FEDERATION
1412 Sixteenth Street, N.W., Washington, D.C. 20036-2266 (202) 797-6800

Statement of
Edward R. Osann, Director
Water Resources Program

before the

Select Committee on Indian Affairs
and the
Subcommittee on Water & Power
United States Senate

regarding
S. 1415
The Colorado Ute Indian Water Rights Settlement Act

My name is Edward R. Osann. I am the Director of the Water Resources Program of the National Wildlife Federation. The Federation, with affiliated organizations in 51 states and territories and some 4.8 million members and supporters nationwide, is the nation's largest conservation organization. We appreciate the opportunity to present these views on S. 1415, the proposed Colorado Ute Indian Water Rights Settlement Act.

The National Wildlife Federation is opposed to enactment of S. 1415 in its present form. The bill, along with the settlement agreement it seeks to implement, is premised upon the construction of the costly Animas-La Plata Project of the Bureau of Reclamation. In our view, this is the fatal flaw in the legislation and the settlement agreement.

The Animas-La Plata Project -- if it works as intended -- would:

* bring new land *into* agricultural production, at a time when the Federal government is signing up farmers to take some 45 million acres *out* of production;

* *waive* enforcement of the acreage limitations of Reclamation law, at a time when Congress is seeking to *strengthen* enforcement of such laws;

* *increase* salinity in the Colorado River system, while the Federal government is running 3 to 5 years behind on its 900 million-dollar program to *reduce* salinity in the Colorado;

* damage or destroy an *existing* local industry -- commercial whitewater rafting -- in the hope of attracting highly speculative, water consuming industry *far into the future*; and,

* spend over a half billion dollars on a *new* project, while an *existing* half billion dollar project nearby goes underused.

Mr. Chairman, the Tribes have been caught between a state water bureaucracy determined to preserve its prerogatives and a Federal water bureaucracy desperate to maintain its construction program. Under these circumstances, it is little wonder that the end result so poorly serves the public interest and so obviously departs from common sense.

The Animas-La Plata Project is a poor investment.

Animas-La Plata was authorized for construction in 1968, intended to serve both Indians and non-Indians in the project area. The project has been plagued by controversy over the last 20 years, and for good reason. The Bureau of Reclamation itself has identified only 92 cents of benefits -- generously discounted at just 3.25% -- for each dollar of costs for Phase I of the project. (Executive Summary of the Draft Agreement for the Settlement of Indian Water Right Claims and Funding of the Animas-La Plata Project, June 30, 1986.) The economic benefits of the project are in fact far less if calculated using the current statutory discount rate of 9.125% and if more realistic assumptions concerning crop prices and yields and industrial growth were incorporated into the benefit-cost analysis.

The share of the total capital costs of Animas-La Plata that are allocated to irrigation amount to $5,808 per acre, but only $47, less than 1%, would ever be repaid by irrigators (Reclamation Project Data Sheet, 1/31/87). The benefits, as reflected by the change in land values, will likely range from $300 to $1,000 per acre, less than

20% of the capital cost of making irrigation water available. Most of the lands to be irrigated are situated over one mile above sea level, where crop production is limited by short growing seasons. Moreover, the subsidization of new irrigation and increased crop production is inconsistent with the objectives of the Food Security Act of 1985, which seeks to retire marginal cropland. Indeed, through July of this year, farmers and ranchers in Colorado had accepted Federal government payments to take over 1,580,000 acres of land out of production as part of the Conservation Reserve Program.

Moreover, a large portion of the water to be provided by the project is designated for municipal and industrial (M&I) use, and earmarked for future industrial use, rather than immediate potable use. However, we are not aware of a single water-using industrial firm that has even signed a letter of intent, let alone a contract, for project water. The M&I water that is likely to be required to service gradual population and economic growth can be supplied by more cost-effective alternatives.

The Animas-La Plata Project is environmentally damaging.

The environmental problems associated with the construction and operation of Animas-La Plata are well known and substantial. Among them are the following:

- The State of Colorado's Bodo Wildlife Area, which provides important winter range for elk and other big game, will be inundated by Ridges Basin Reservoir;

- The flows of the Animas River will be greatly depleted by project withdrawals, dealing a serious blow to the well-established whitewater rafting industry and causing significant losses to the river's fishery;

- Increased salinity in the Colorado River at Imperial Dam, the point of reference for meeting our treaty obligations to Mexico for Colorado River water quality;

- The loss of over 50 megawatts of electric power -- enough energy to meet the needs of a city of 60,000 people -- just to pump water more than 800 feet high out of the Animas River.

Sensible alternatives are available to meet Federal trust responsibilities to the Tribes.

Mr. Chairman, it is apparent that the implementation of the 1986 Settlement Agreement faces a host of intractable problems associated with the construction of Animas-La Plata and the intended use of project water. Environmental problems are significant, agricultural objectives are in conflict, and interstate allocations appear to be threatened. Any one of these issues could sink a more worthy Reclamation project. The combination of these concerns will surely sink the Animas-La Plata Project.

Under these circumstances, and faced with the reality that the 100th Congress will adjourn without enacting S. 1415 or its companion, H.R. 2642, we believe that the parties might want to give consideration to an alternative settlement -- one that can bring more benefits to both Tribes more quickly than S. 1415, even if it were signed into law today, and do so with far less expenditure of economic and environmental resources.

The main components of such an agreement could include the following:

1. The Tribal Development Funds, as contained in current legislation.

2. Cost-effective irrigation development of reservation lands, such as those serviceable from interconnection with the Dolores Project or by minimal pumping from the Animas or Mancos Rivers;

3. Allocation of the electric power generating capacity and energy from the Colorado River Storage Project (CRSP) that has previously been dedicated for project use directly to the Tribes; and,

4. Such additional Federal and State contributions to the Tribal Development Funds as may be necessary for more comprehensive development of the social and physical infrastructure of Tribal lands.

In short, we recommend "cashing out" the water rights claims of the Tribes, not only with wet water and development dollars, but also with a real asset in current demand -- electric power. This power -- power that the Bureau of Reclamation would waste to pump water 800 feet uphill -- could provide an immediate cash flow of over $6 million to the Tribes. This estimate is based upon the spread between the current cost of CRSP power provided to the Colorado River and Navajo reservations and the current price of CRSP power provided to investor owned utilities, according to the most recent annual report of the Western Area Power Administration.

There is ample precedent for such an allocation of Federally generated power for resale in section 107 of the Hoover Power Plant Act of 1984, relating to repayment of the Central Arizona Project. I would point out that CRSP preference customers are no worse off, since this power would have been dedicated to the Animas-La Plata Project anyway. The Tribes will of course be free to dispose of this power in such a way as to make provision for their own needs for growth and development on Tribal lands.

It should be noted that the net present value of an annual cash flow of $6,444,000 resulting from power sales for a 50-year period is $69.7 million. When computed at the same discount rate used to compute benefits of the Animas-La Plata Project itself, the present value of the power revenues is over $158 million.

Conclusion

We recommend that S. 1415 be substantially modified to facilitate a fair and generous settlement of Colorado Ute water rights claims, as outlined above, and to deauthorize the principle features of the Animas-La Plata Project. Such a modification would allow the Secretary of the Interior to meet his important trust obligations to the Tribes, at far less cost to the Federal taxpayer and to the natural environment. Thank you for the opportunity to present these views.

Colorado Wildlife Federation

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STATEMENT OF

DR. CHARLES OLMSTED

DIRECTOR OF THE ENVIRONMENTAL STUDIES PROGRAM
AT THE UNIVERSITY OF NORTHERN COLORADO

REPRESENTING THE

COLORADO WILDLIFE FEDERATION

BEFORE THE

U.S. SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
AND WATER & POWER SUBCOMMITTEE, SENATE ENERGY & NATURAL RESOURCES COMMITTEE

REGARDING

S 1415

DECEMBER 3, 1987

1560 Broadway, Rm 895 Denver, Colorado 80202 (303) 830-2557

Mr. Chairman, and Members of the Committees, thank you for the opportunity to present the views of the Colorado Wildlife Federation (CWF) on S. 1415. My name is Dr. Charles Olmsted. I'm Director of the Environmental Studies Program at the University of Northern Colorado and I'm a member of the Board of Directors of the Colorado Wildlife Federation. CWF is Colorado's largest conservation/education organization, with over 16,000 individual members throughout Colorado and the nation. Many of our members reside near or within the project area that is part of this proposed settlement. Our members regularly use this area to hunt, fish and participate in a wide variety of outdoor activities.

CWF OPPOSES ANIMAS-LA PLATA

The Colorado Wildlife Federation is opposed to the Animas-La Plata Project because of the destruction of fisheries habitat on the Animas River and because the reservoir site will destroy what is now a Colorado Wildlife Area that is critical winter range for both deer and elk. More importantly, we are here to suggest a better way to satisfy Colorado Ute Indian water claims than S. 1415 currently proposes.

UTE INDIAN TRIBES

Today we are here because of our concern that the Ute Indian Tribes actually get the water they need where they need it. As you know, all of the facilities to supply water to actual reservation sites were moved to Phase II where they are non-federal obligations. Phase II represents a cost of approximately $200 million, with no one obligated to pay it. In our view, this tells us that water will never be delivered to the sites where the tribes need it. Therefore, we suggest you offer to amend the legislation as follows:

1. For the Southern Ute Tribe

Provide the Southern Ute Tribe water now, directly in the Animas. This would be 10-12 years earlier than they will get it through the project. The Southwestern Water Conservation District owns 600 cubic feet per second (CFS) of water at the proper diversion point and could easily assign enough water to the Tribe. The Tribe could then use the water to irrigate their land along the Animas and when their coal becomes saleable, a jointly funded (Tribe, U.S. Government, Coal Company) gravity feed canal could be built to the Southern Ute reservoir area. This immediate transfer of the water would relieve the Tribe of project costs and Operation, Maintenance and Repair costs.

2. For the Ute Mountain Ute Tribe

Provide the Ute Mountain Ute Tribe water out of McPhee Reservoir immediately. This would help the Bureau of Reclamation dispose of the water that the farmers there don't want. We also recommend implementation of the Soil Conservation Service salinity control project in the Mancos Valley (approximately $6 million). This project will make available 10,000 acre feet of water in the Mancos River just south of the town of Mancos. This water would then flow through the heart of the reservation down to Towaoc. When the irrigation canal from McPhee to Towaoc is finished, the Ute Mountain Utes would then be getting water at two different points on their reservation. (The irrigation canal is part of the Dolores Project.)

We believe that these alternatives will provide the tribes with equal or greater quantities of water and in more useful locations at less cost than the present scheme. And Animas-La Plata is then not needed to satisfy the Indian claims. If your committees wish to pursue these alternatives, the Colorado Wildlife Federation would be pleased to provide background material and any other assistance necessary to make these proposals work.

WILDLIFE AND FISHERY IMPACTS

The adverse impacts on wildlife and fisheries resources of the Animas-La Plata Project are many. The Bodo State Wildlife Area would be inundated by the project, and this is important winter range for both deer and elk. The Colorado Division of Wildlife has stated that the Bodo Wildlife Area was their number one priority for acquisition for big game winter range.

Additional adverse big game impacts include:

* loss of approximately 4,700 acres of mule deer habitat in the project area and replacing it with only 2,500 acres;
* loss of approximately 2,230 acres of primary elk winter range.

The adverse fisheries impacts include:

* the elimination of 10 percent of the current fish population from Durango to the New Mexico State line, a total loss of 10,600 pounds annually;
* pumping from the Animas river would deplete the natural flow by 125 CFS in winter and 225 CFS in summer;
* the width of the Animas River would be reduced from its current average of 126 feet to 115 feet.

This concludes our statement. Thank you for providing this opportunity to present our views.

Statement of

Renay Neely
Dolores County, Cahone, Colorado

FARMER

CHAIRMAN BOARD OF COUNTY
COMMISSIONERS OF DOLORES COUNTY

before the

SELECT COMMITTEE ON INDIAN AFFAIRS
WATER AND POWER SUBCOMMITTEE OF
THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
THE SENATE OF THE UNITED STATES

regarding

S. 1415
THE COLORADO UTE INDIAN RESERVED WATER RIGHTS
SETTLEMENT ACT OF 1987

December 3, 1987
Dirksen Senate Office Building

Introduction

My name is Renay Neely from Cahone, Colorado. My wife, Nita and I own and operate land in both Dolores and Montezuma Counties. We have three boys of which two of them own land and farm with us. My wife was born and raised in the Yellow Jacket area which is referred to now as the Fairview Block. I was born and raised in the Cahone Area which also has water now from the Dolores Project.

I am presently Chairman of the Board of County Commissioners of Dolores County, I served eight years on the Dove Creek Soil Conservation Board, ten years on the Board of Farmers Mutual Telephone Company in Pleasant View, I am currently secretary/treasurer of Intercell Corporation which is a tele-communication business located in Pleasant View, which has offices in Denver, Colorado; Phoenix, Arizona; and Salt Lake City, Utah; and a board member of San Juan Bible Camp in Mancos, Colorado. So you can see I am well acquainted with southwestern Colorado and I'm interested in its economic well-being.

Summary of Statement

My testimony today is based on my past 32 years of farming in Southwest Colorado as a dryland farmer. I am told that my experience and the fact that I will be sprinkler irrigating this next season on the new Dolores Project have a bearing on the outcome of this legislation. I'm not sure how that is, but I'll let somebody else be the judge. I watched with real anticipation as the first water was delivered in mid-June in the Fairview Block. You could immediately see the results on the pinto beans and alfalfa hay.

Testimony

Those who were able to use the water had substantial increases in their yield, 1,300 pounds per acre as compared to 400 pounds, a county-wide average on pinto beans. Three and 4 tons of hay as compared to 1 to 1 1/2 tons with the short use of the water this year.

The farmers in the full-service area are really encouraged by what they see and are looking forward to the full use of water next year. This year we saw 52 systems put in use, and I can count 50 more to be put in by next season. One farmer has 280 acres on which he has started planting trees and using a drip system. The past 60 years we have been locked into pinto beans, winter wheat and alfalfa, now we have a chance for some diversification in other types of crops.

On the other side of the coin, we have the farmers in the Pleasant View, Hovenweep, Cross Canyon and the Dove Creek areas waiting and wanting their water but are seeing it slip away by a few who do not want the water they contracted for some 10 years ago. Parts of the project have been completely eliminated and now the appropriations for 1988 have been cut way back. To me, it is real unfair to sign a contract with someone and then one party back out.

The people in the area have been looking forward to this project for some 50 years, and now it seems to be slipping away with only a partial system completed.

The towns and rural communities need a good dependable source of good water which brings to light the great need for water to be delivered to the Ute Mountain Ute Indian Tribe and the town of Towaoc. I have been around and done business with these people all my life and they are totally dependent on other sources for their personal achievements, livestock needs, etc. in the agriculture industry.

They have the Navajo Agriculture Products Industries that join them to the south and the Montezuma Valley and dryland farms to the north. With the continuation of the Dolores Project, they can become part of the local economy in helping supply the agricultural needs of this great country of ours.

I have talked to farmers which will receive water from the Animas-LaPlata Project, and they are anxiously awaiting the building and delivery of water on their farms. They have been over and looked at the results of what the water has done in the Fairview and Cahone Blocks.

There has been a big increase in the economy in the areas of recreation and tourism since the completion of the Dolores dam and the filling of the McPhee reservoir, and it will continue to grow with other industry and jobs if the project is brought to full completion.

Conclusion

In conclusion, I would like to say it has been real rewarding to me and all of Southwest Colorado to see the dam built, the lake filled, the canal built and filled and water delivered to the dryland areas and would like to encourage this committee, Congress and the Administration to continue to push for the Ute Indian Water Rights settlement and the completion of the Dolores Project.

Thank you for the Dolores Project as we have it today and thank you for allowing me to be here today.

STATEMENT OF
JAMES R. ISGAR
FARMER-RANCHER, DURANGO, COLORADO
before the
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
and
THE WATER AND POWER SUBCOMMITTEE
OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
regarding
S. 1415
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987
Washington, D.C.
December 3, 1987

Mr. Chairman and members of the committee, my name is James Isgar. I am 36 years old and I farm and ranch in southwestern Colorado near Durango. I am also a C.P.A., having completed college and graduate studies. I farm by choice. I enjoy being a part of the producing segment of our society. I like the satisfaction I get from doing an honest day's work on my farm.

I am here today to testify in support of the Colorado Ute Indian Water Rights Settlement Act of 1987. S. 1415 will assure that I, a dryland farmer, will be able to receive a reliable source of irrigation water for my farm and eliminate the threat posed by Indian water rights claims to the water supplies now available to non-Indian irrigators in the La Plata River Drainage. Without the Animas-La Plata Project embodied in the Settlement Act, the economic base for the entire Four Corners region, an already economically depressed area, will be severely damaged.

Not only will enactment of this bill allow the Utes to realize their historic entitlement, it will provide our regional agriculture sector with the certainty of water supplies needed to assure our future. With water on our farms, we can increase production of livestock and crops that our country genuinely needs. Presently, without dependable water supplies, we lack the option to raise crops that are not in surplus. Although we have extremely productive soils, our crop selection is limited because of the lack of water.

The Water Rights Settlement Act fulfills the promises of the nation to the Utes, and extends to regional farmers the opportunity to improve their stability and potential.

My father, Arthur Isgar, has come here to Washington to testify before you in years past. He once thought he would be able to irrigate with water from the Animas-La Plata Project. As the years went by he realized this would not be possible. But he still continues to work for the Project because he wants me to have the chance to receive the water. Now I too wonder if I shall be able to use the water from the proposed project. What do I tell my sons? Will they receive water and have the chance to farm, or will the promise of water remain only that, a promise? I ask your support for S. 1415 to make that promise a reality.

Thank you.

AMERICAN PUBLIC POWER ASSOCIATION
2301 M STREET NW WASHINGTON DC 20037 • 202/775-8300

Statement Before the
Senate Energy and Natural Resources Committee,
and the Select Committee on Indian Affairs
Concerning S. 1415
"The Colorado Ute Indian
Water Rights Settlement Act of 1987"
by the
Colorado River Energy Distributors Association
December 3, 1987

My name is Linda Lazzerino. I am a staff attorney for Platte River Power Authority, headquartered in Fort Collins, Colorado. I am here today on behalf of the Colorado River Energy Distributors Association ("CREDA") as a member of its steering committee. CREDA represents 117 municipal electric systems, consumer owned systems, and state agencies located in the states of Colorado, Wyoming, Utah, New Mexico, Nevada, and Arizona. The views I will express this afternoon are also shared by the Colorado Association of Municipal Utilities ("CAMU"), whose members are the municipally owned electric utilities within the State of Colorado, by Platte River Power Authority, and by the American Public Power Association.

Our concern today with the "The Colorado Ute Indian Water Rights Settlement Act of 1987" is limited to provisions relating to the financing of the Animas-La Plata Project, which is a participating project of the Colorado River Storage Project. CREDA members purchase nearly 90% of the power generated by the CRSP and thus are always concerned with legislation affecting the sales provision for that power.

The power users have expected the Animas-La Plata Project since it was authorized in 1968 and have stood ready to pay their allocated share of the project costs on the same terms and conditions they have fulfilled in financing other CRSP projects under current reclamation repayment policy. The CREDA members have also supported appropriations for the Animas-La Plata Project through support of the Bureau of Reclamation budget. However, APPA, CREDA, and CAMU all strongly oppose what amounts to a unilateral change in the provisions of the purchase contract arrangement that has been the standard for not only CRSP projects, but federal water projects nationwide for many years.

Our specific objection is to the language contained in Section 6(b) of S. 1415. That section provides for repayment of irrigation costs in 30 equal annual installments. This "straight-line" repayment methodology is a drastic departure from traditional reclamation repayment methods. The procedure also shortens the repayment period, rejects the longstanding policy of repaying the highest interest bearing costs of the project first, and removes the flexibility the government has to levelize rates. This change could result in substantial increases in rates paid for power produced from CRSP and, without justification, would breach a longstanding agreement.

The Animas-La Plata Project contains no power features, but, according to August 1986 figures of the Bureau of Reclamation, power users will pay almost $227 million of the then anticipated $392 million total irrigation costs. This is a result of the historic bargain that was struck thirty years ago to achieve the ultimate development of the CRSP. Power users acknowledge their side of the bargain: the traditional support of irrigation. We are only asking that the other side of the bargain be kept, that those support payments be established according to the originally established ratemaking methodology.

The CREDA members have made resource commitments and have based their future long range plans on the specific terms and conditions that have long accompanied the CRSP Act. To disrupt the financial terms that have been the basis of public power customers' investments for more than 50 years, such as proposed in S. 1415, would be inequitable and would do substantial harm to the electric consumers who depend on the CRSP resource. Delivery of federal power resources directly to the people at the lowest possible costs, consistent with sound business principles, depends on continuing the longstanding commitment by the federal government to a constant, reliable and flexible ratemaking criteria.

No doubt the committee has been advised that, according to the present figures from the Western Area Power Administration, because of the unique distribution of revenues under the CRSP Act the 30 year straight-line amortization provision will not adversely affect power rates. This holds true only if there is no delay in construction, no change from the present schedule, timing holds on other projects in the CRSP, and present cost projections are accurate and unchanging. Any change in any one of these aspects, and most certainly a cumulative impact would result in rate increases. The electric ratepayers bear all the risk and have no control.

The risk of rate increases in Animas-La Plata is compounded by what we see as a precedential authorization for changes in the repayment criteria for other federal power projects. Extension of such provision will ultimately negate any benefit of federal power allocated for the direct use of the non-profit consumer. Power users object to the continuing barrage of attempts to use power revenues for unrelated purposes and the use of their resources for settlements reached without their participation.

We are aware that the parties have worked long and hard and everyone has compromised to reach this unique settlement. But we should acknowledge that uniqueness. We are not just financing a water project. We are paying a premium for a settlement of water rights. That settlement is a laudable and infinitely supportable objective, but it is not a feature contemplated in the ultimate development of the CRSP, nor is it one that can equitably be charged to a limited class of consumers that have neither the responsibility for the problem nor claim to the benefits that will be derived.

Power users have been advised, by parties to the settlement and by Congressman Ben Nighthorse Campbell at the House committee hearing on this bill, that the Office of Management and Budget and the Department of Interior told them there would be no Animas-La Plata if the thirty-year straight-line approach were not accepted. These are the same agencies that have proposed "sale of the power marketing administrations," "straight-line amortization" across the board, "increase in interest rates" on existing projects, and other unsupportable changes in the federal power program. All of these proposals have been rejected by the Congress of the United States after debate and review on the merits. We urge Congress to hold firm in its refusal to alter the repayment policies of the federal power program.

We strongly encourage the Committee to strike the provisions in this act which provide for 30-year straight-line amortization of the irrigation investment of the Animas-La Plata Project. Power users feel they have an agreement of longstanding that has served the parties well. They continue to support that agreement and we urge the federal government to do the same.

I thank the committee for the opportunity to state our views and ask your serious consideration of these comments.

SUPPLEMENTARY TESTIMONY TO THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

-by George Orbanek-

Colorado Forum

Thank you, Mr. Chairman. We have, as members of the Colorado Forum, submitted a written transcript of our formal testimony in support of S. 1415. With your indulgence, I would like to add a few, very short personal remarks.

My name is George Orbanek. I am editor and publisher of The Grand Junction Daily Sentinel. As such, I am not the most likely person to be here today offering testimony in support of this very important piece of legislation.

Grand Junction is often characterized as the capital of Colorado's Western Slope. It is the largest city in western Colorado and is located approximately midway between Denver and Salt Lake City.

Our newspaper circulation area extends to Moab, Utah, on the west; Telluride, Co., to the south; Meeker, Co., to the north and just short of Aspen, Co., to the east. I dare say that The Daily Sentinel's circulation area encompasses more square miles than some eastern states.

That said, our circulation area falls many miles short of southwesternmost Colorado, the part of the state in which the Animas-La Plata Project has long been authorized for construction. Durango, Co., the largest community in close proximity to the project area, is approximately as long a drive from Grand Junction as Denver is to the east and Salt Lake City is to the west.

Because of vast geographic distance, Grand Junction residents will derive no direct economic benefit from the construction of the Animas-La Plata Project. Were my appearance here based on the economic benefits a major federal reclamation project would bring to my primary readership area, I would be here in support of a couple of other federal reclamation projects - the West Divide and San Miguel projects - that Congress authorized for construction in the same year, 1968, that it authorized the Animas-La Plata Project. But I am not here in support of West Divide and San Miguel. To be perfectly candid, those two projects have no defensible rationale and don't deserve to be built.

In saying that, I am revealing a personal bias. I am a Colorado outdoorsman with a particular affinity for fly-fishing. As such, I have a near-reverential regard for what I feel is the priceless nature of free-flowing rivers and streams. I have never been a presumptive supporter of major federal reclamation projects.

My personal feelings, of course, are immaterial to the subject matter at hand. In similar testimony before the House, I stressed that it is no hyperbole to say that what's at stake here is nothing less than a moral imperative, namely, the federal government's responsibility to fulfill its trustee obligations to the Native American peoples of this land. I urge you to keep that fact uppermost in mind and give quick support to this critical piece of legislation.

Thank you very much.

Roth

Colorado Forum
Business leadership for Colorado's future

December 3, 1987

STATEMENT OF THE COLORADO FORUM

JOINTLY PRESENTED BY GEORGE ORBANEK, EDITOR AND PUBLISHER, THE DAILY SENTINEL, GRAND JUNCTION, COLORADO; AND HERRICK S. ROTH, PRESIDENT, HERRICK S. ROTH ASSOCIATES INC., DENVER, COLORADO, ON BEHALF OF THE CO-CHAIRMEN OF THE WATER POLICY COMMITTEE OF THE COLORADO FORUM, WILLIAM D. LORING OF GRAND JUNCTION AND WILL F. NICHOLSON, JR., OF DENVER,

BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS AND THE WATER AND POWER SUBCOMMITTEE OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES -- UNITED STATES SENATE

regarding -- S. 1415

COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987

Background

The COLORADO FORUM is a not-for-profit, non-political, unincorporated association of the chief executive or principal officers of the key business and professional firms in Colorado's private sector. Their names and a brief description of the purpose of the FORUM and the process which the FORUM utilizes are on the reverse side of this letterhead. The business leaders of the FORUM represent a diversified base of our State's principal economic sectors as well as a geographical representation which truly represents the intermix of our trade areas -- urban and rural; agriculture, manufacturing, mineral production, tourism, communications, law and services in all of our major river basins in both mountains and plains.

BEST COPY AVAILABLE

The COLORADO FORUM, since its inception nine and one-half years ago, has proceeded to address problems of growth and quality of life in our State in an effective manner because of a deliberate structural (as well as non-structural) design. The participants are the members, themselves, not their intergovernmental and public affairs staff. Members must be in regular attendance at monthly meetings or else a new member takes his/her place. Membership is limited to thirty-four individual firms and three out-State business leader consortiums. No more than three major public policy issues are on the program agenda so that the FORUM's attention can be focused rather than spread thinly across-the-board. All agreements must be unanimous for programs to be put on the agenda and conclusions reached as the respective programs are evaluated. Public advocacies (like this statement) are made when appropriate but the FORUM, itself, retains no professional advocate or lobbyist at any level of governmental policy concern.

The FORUM applies pre-mediation processes when meeting with adversaries in major public policy areas with the hope of finding "common ground" for such adversaries. If found, a strategy is proposed for the parties to pursue the solution required to solve the problems that run counter to the general community interest.

The FORUM has no officers and can deal with no client problems -- only public policy issues. The FORUM has a "sunrise". It must have unanimous consent to continue its existence from year to (more) year or else it will terminate itself, automatically, any December 31st. Subject to that consent, the FORUM will extend into its eleventh year in 1988.

Understanding Our Commitment to S. 1415

Given this background, we believe Members of your Committee will better appreciate the commitment the FORUM has to both the Agreement among the parties and the proposal resulting from that Agreement now before you for passage into public law.

We have in nine years involved ourselves in work on problem areas relating to only seven public policy issues in Colorado. Two of these we have kept on our agenda for seven of our nine years and have just elected to continue to do so for the year ahead -- (1) the relocation and establishment of the world's fifth busiest airport and (2) water policy and the Colorado River Basin. The latter we address appropriately for your consideration today.

Five years ago the FORUM published under one cover a total review of the historic development of water resources on the Colorado River. We evaluated what the River now means and could further mean to Colorado in particular and to the Southwest in general. It has been updated once but is again out-of-print. But out of that report, the FORUM focused, first, on a major reclamation project that we determined had a sufficient community of interest to warrant its construction, namely, Animas-La Plata. (more)

Simultaneously, but to a lesser extent, we determined that the Colorado River had to be considered as a total system. Because the greater number of its utilizers are in the Lower Basin States, we determined that even we in Colorado had to view the River's resources on a more global basis. We therefore have had during the past three years, communication in a limited manner with business leaders in Arizona and Southern California, and with water management officials to a greater degree.

Let us look briefly at the second part of our focus. We have visited with and have had official visitors come visit with the FORUM in Colorado from the Los Angeles Metropolitan Water District, the Colorado River Board of California, the San Diego County Water Authority, the Arizona Department of Water Resources, the Salt River Project, the Central Arizona Project, the Colorado River Commission, the Bureau of Reclamation, the Western Area Power Administration and the Central Arizona Project Association. Additionally, we have conferred with the principal director or state engineer relating to water resources in five of the seven Basin States, not to mention a number in both the Missouri and Columbia River Basins. We have also participated in both water marketing and water quality environmental issues discussions and conferences in California, New Mexico, Utah and Colorado.

Out of it, we continue to maintain and stress a very paramount consideration in the measure before you, namely, that THE (more)

COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987 must be viewed as one of Federal interest and not one of provincial interest of any of the seven States in the Colorado River Basin. You must not lose sight of this.

Why Significant -- Indian Water Rights

Why did we focus, then, on Animas-La Plata ? Several reasons, of course, but the one of greatest significance to us was the question of negotiating, not litigating, Indian water rights. We not only developed that theme but have had the entire FORUM membership, four times in the past four years, visit directly with three successive Secretaries in the Department of the Interior, with the OMB and with the leaders from the Congressional delegations of New Mexico, Arizona, California and Colorado.

Indian water rights problems are a common thread throughout the West. Indian water rights claims versus non-Indian water rights claims have caused, and will continue to cause, extreme social and economic problems. The present day problems which arose out of the 1907 Supreme Court decision in Winters vs. United States, a case which has been often referred to as the genesis of Indian water rights, have been compounded by the inability or refusal of public officials to deal with those problems over the last 80 years. The luxury enjoyed by our predecessors, basically a policy of ignoring or overlooking the rightful claims which our Indian tribes have to many of the streams in the West can no (more) longer be enjoyed. Indian tribes have gone to court and have successfully demonstrated their entitlement to water under the laws of the land. Litigation, however, has proven to be a very ineffective tool.

The Cost Sharing Agreement entered into on June 30, 1986, together with the December 10, 1986 COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT, represent a win-win solution to the Indian water rights problems -- or more appropriately referred to as the non-Indian water rights problems -- in the State of Colorado and should serve as a model agreement for other states throughout the West who are faced with Indian versus non-Indian water conflicts. The Cost Sharing Agreement represents Colorado's commitment and good faith effort to join with the Federal government in bringing about a new method of financing water resource development in the West. The Cost Sharing Agreement represents a significant departure from the historic and accepted methods of financing water projects in the West. The negotiated settlement presented by the Colorado Ute Indian Water Rights Agreement allows each of the parties involved to meet some or all of their major concerns. It allows for unique and creative arrangements to meet as many of each party's concerns as possible. It secures commitment from all the parties to take action and provide the funding to implement the agreement according to an agreed upon time schedule. In general, the Agreement will maximize economic opportunities by allowing the Southern Ute and Ute Mountain Ute Indian Tribes to progress toward becoming viable, self-sustaining

(more)

communities and will at the same time protect the considerable investments of the non-Indians in the San Juan Basin in their water use.

In addition, the Agreement allows the Federal government to fulfill its trustee obligations to the Tribes and avoid payment of damages for breach of trust responsibility or of claims for compensation for lost rights from non-Indians. Negotiated settlements are clearly preferable to litigation. Congress' approval of this legislation will send a strong message to areas in the West where these disputes are still pending that Congress is enunciating a policy of Federal participation in favoring negotiated settlements as a method of resolving these disputes. The approval of the Agreement will bring certainty to water rights disputes through a negotiated settlement process. The approval of the legislation will ensure fulfillment of a unique Federal responsibility that the Federal government has to Indian tribes. Just as the Congress mandated that states should share the cost of water resource development, Congress should signal the Indian tribes in other states that negotiated settlements will be reviewed and accepted as the favored policy of Congress.

The COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT is strongly supported by both Indians and non-Indians in the State of Colorado. The Federal government is asked and should be willing to make a fair and just contribution to the settlement in fulfillment of its obligations to tribes. The settlement is (more) compatible with existing water rights conditions in Southwestern Colorado and Northwestern New Mexico and will prevent a dislocation of water rights which have been used and vested in non-Indian water users over a significant length of time. There does not appear to the COLORADO FORUM to be any detrimental effects that would flow from approval of this legislation. We believe that by approving the legislation, Congress will be adopting a policy which can be emulated by others in the West to the benefit of all the citizens of the United States.

Current Transition -- New Points of Emphasis

Subsequent to our presentation of testimony before the Committee on Interior and Insular Affairs, United States House of Representatives, September 16, 1987, we have further addressed and are dealing with a transition of events which were being generated during the period between the introduction by Sentor Armstrong, joined by his colleagues, Senators Wirth, Domenici and Bingaman, of S. 1415 and the companion introduction by Rep. Ben Nighthorse Campbell and others of H. R. 2642.

The first of these trends came to the point of public expression by the chief spokesmen of both of the agency/bureaus in the United States Department of Interior having direct interest in this Act and the signed negotiated settlement so uniquely arrived at between and among the Bureaus of Reclamation and Indian Affairs, the Animas-La Plata water conservancy and user districts of Southwestern Colorado, the States of Colorado and New Mexico and most importantly, the two Ute Indian Tribes who are the subject of S. 1415. That expression, in the name of the Secretary of Interior, resulted in intense re-negotiations between and among the parties between September 16, 1987, and early November, 1987. Separate from our testimony, you will have that Statement before you on behalf of the Administration and the Secretary of the Interior in suport of S. 1415.

Perhaps by the date of oral testimony before your Committees, other modifications or settlements will be reached with water management agency expressions that primarily focus on Lower Basin States of the Colorado River. We, ourselves, between the date of forwarding this statement to you and the date of our appearance before your Committees, will be renewing our own further dialogues with principal water management officials of the State of Arizona and the Metropolitan Water District of Southern California.

Because we are concerned about how we view "The River" -- namely the Colorado from its several sources to its entry into Mexico -- we want to extend our Statement to you on December 3, 1987, on how we view the Federal interest as expressed in S. 1415 vis-a-vis the provincial or parochial interests of those who utilize the resources of that River at various points along its various courses.

Since Colorado sits at the "Head of the Ditch" and fortuitously benefits by both geography and climatology, we are naturally blessed to produce the major share of the flow of the River. Because of the more rapid population growth and necessarily more demanding impacts on the States of California and Arizona, they require the source waters from Colorado in reasonable proportion. We believe it was no stroke of genius on our part to have determined that we must focus on the total River, even though Colorado has available to it the largest share of undeveloped rights of any State under the "Law of the River".

The questions that will probably still be raised by Lower Basin water managers should in no way delay or otherwise impede the passage of S. 1415. We have high regard for the needs of the two key States but know that their posture on S. 1415 is wrong.

They are at high risk with each other, let alone the other States in the Colorado River Basin, if this River of scarcity known as the Colorado did not provide for both of them their current lifeline, let alone their future.

But we say to you very candidly and quite honestly that if California and Arizona do appear unusually adamant in their singular objection to the Indian Rights Settlement embodied in the bill before you, they are not consistent with the Federal interest -- and it was the Federal interest from the start that gave the opportunity for some of the most attractive living conditions in America to Arizona and California, of all of our States.

At issue, of course, is whether or not Indian Tribes in the Southwest -- not just in Colorado -- can transport the water which they own (or should own) outside their reservations. True, we are only speaking of around 50,000 acre feet of water as the projected annual potential of what the Ute Mountain Ute and the Southern Ute Indian Tribes of Colorado might conceivably market outside their own boundaries. But those who now own and market and even receive excess water over their entitlments are expressing reservations on the condition of "precedent".

This Act does set a precedent. The precedent is two-fold and we cannot underscore it too strongly. (1) The precedent is that each project from here on out in the West has to be looked at on its own merits and that each settlement has to be made on its own merits. (2) The precedent is that this was a negotiated settlement in good faith between a majority population and Indian Tribes and between and among governments: Federal, States and local conservancy districts. These are precedents and uniquely so.

The water management interests of the Lower Basin States pale in insignificance before these precedents; yet, interestingly enough, Arizona and Southern California will win if they support S. 1415. They will lose in the long haul if they act as if they have no one at the head of the ditch who has a global view of the water scarcity that draws a tighter noose on their living and economic standards as we move into the next century.

We are saying to our colleagues in water management and the business leadership communities of Arizona and Southern California, there is a new day. S. 1415 embodies the new day. This is a negotiated -- not a litigated settlement. Water demands are many and need to be recognized as most urgent where people live and work and produce for the wealth of our land. Colorado will not need all of its "normal entitlements" under the Compacts or the public laws of the United States that relate to the Colorado River for generations to come. New approacches need to be taken among States and leaders of good faith to reckon with the flexibility that is required in the management and development and utilization of water resources of the Colorado River. They can be. Intransigence is not the answer nor is it in the Federal interest.

If the negotiations which were completed in Colorado were successful under the most difficult of often adversarial interests, Colorado and New Mexico, among others, are in a position to negotiate with Arizona and Southern California and Southern Nevada about utilizing the resources of the Colorado River. No one in your hearing room on December 3, 1987, should have the temerity to dispute this, whether here to be heard or here to testify or either or both. If this means that the Members of your Committees need to add to S. 1415 as you see it a further amendment that specifies (1) that the two Indian Tribes can market up to 50,000 acre feet of water outside their reservations boundaries (Colorado has already signed to that effect) upon the completion of the Animas-La Plata project, (2) that such quantity of water as is so marketed will not reduce the claims that any of the seven Basin States now have on the quanity of water each can respectively take from the River and (3) that this settlement applies to no other ownership of or entitlements on the River, then you will have provided great service to the United States' total interests, namely:

(1) Recognized that this is a cost-sharing agreement, the first significant one ever made with the Federal Government on the Colorado River;

(2) Recognized that this is truly an "eight party", locally negotiated agreement consistent with the "New Federalism" which is rhetoric to some people but represents the pragmatics of fact in S. 1415; and

(3) Recognized once again that the Federal interest in promoting the creation of wealth from our Nation's replenishable resources is as alive and well now as when President Theodore Roosevelt proposed to the population centers of America that the resources of land, water, forests and minerals required the prime conservation interests of the Federal Government at the turn of the current century.

Your Alternatives

Your alternatives are negative ones.

You can say to two States, two often adversarial interests in the U. S. Department of the Interior, two Indian Tribes and two large groups of productive "otherwise Caucasian" owners of irrigated lands in Southwestern Colorado that you do not believe in negotiating settlements which turn out to be "win-win" and which prevent costly litigation.

If you in the Congress elect the above alternative, you are also buying its corollary, litigation by and on behalf of the Ute Indian Tribes for their "replacement for the real thing" (water development) with cash or cash-in-kind settlements. Under the Winters Doctrine, no attorney, Federal or other, will say that there is any chance at all of the Tribes losing that litigation.

The next step in the process is the extension of this alternative. Someone will have to then pay in cash all of the white settlers who for seventy or more years have been utilizing the water of the several tributary streams and rivers that relate to both the Animas and La Plata Rivers in Southwestern Colorado. That means very unnecessary social, political and economic upheaval over and above the monetary values that are attached to such a settlement.

In the House hearing, we were asked to present some reasonable projections on the costs that would come from the litigation process. After leaving out over $200 million of additional evidence that could have been tacked on for effect, we trimmed our sails very tight and came up with a minimum figure of one half billion dollars that well enough could be litigated and resolved in the next five years.

We are attaching those projections as an Addenda to this Statement. Since they have been released publicly, the data and predictions we have set forth have come in for more praise than criticism, both in public and private arena. Those who are most vocal in questioning it , however, are persons who have organized an opposition to the project in Southwestern Colorado on the basis of land ownership, environmental (economic and natural) persuasions and "no growth" policies. Although they are a minority among the people who live in the area of Animas-La Plata, they are heard properly because of the "Federal interest" in the rights of assembly and expression.

In the latter regard, however, the principal thrust of the public spokespersons in the group simply state that if the COLORADO FORUM's projection of litigation costs and awards are over $500,000,000, why then are not the Tribes litigating for that right now? That question speaks to a vacuum -- as if people are not people and as if people who are Indians and people who are other than native Americans should not make agreements among and between themselves that can be honored and administered with justice.

The COLORADO FORUM knows how unique this settlement is and how no one is demeaned in this process. The COLORADO FORUM also knows that Indians in America have never been given the entitlements promised to them by even the Federal Government. Here in S. 1415, we are doing it -- and they are in the process, are in the agreement and are equals to two States and their non-Indian neighbors. S. 1415 underscores mutual respect; a settlement that will create wealth rather than remove it from the Federal treasury.

Concluding Expression

Obviously, we are saying that you should be thankful that S. 1415 is yours to implement and pass. If you choose not to do so, you will do more than just diminish the Federal interest and the Federal responsibility.

Even though the COLORADO FORUM has no portfolio, no authority as such, we have stated to you the deep involvement which our members have had in facilitating, understanding and evaluating

Animas-La Plata as a cost-shared project which has produced the Ute Indian Water Rights settlement. In a sense, we have become the principal public voice on behalf of what S. 1415 states. We are not water managers, Federal, State or local. We have applied our conscience and best judgment to our unanimous collective decision to put our case before you on behalf of S. 1415.

S. 1415 embodies the uniqueness of America. It also rights an injustice of more than a century in duration. It is pragmatic. In its cost-sharing features, it is economic feasibility of the best order. We urge timely movement of this legislation through the Congress and to the President's desk.

Attachment -- ADDENDA

December 7, 1987

ADDENDA TO COLORADO FORUM STATEMENTS, S. 1415

The Costs and the Benefits if the Ute Tribes Litigate

Let us begin with established fact. The Supreme Court decision in Winters vs. United States dates back to 1907, eighty years ago. The fact is that this judicial law provides the Ute Indian tribes both the benefit and the costs of eighty years. That is a fact that would be confronted, carefully, by legal advocates before the courts if the Tribes involved decided that the time has come to litigate.

The next fact to be confronted relates to irrigable land which is available to (1) the Ute Mountain Utes on the Mancos and La Plata Rivers and the (2) Southern Utes on the Mancos, La Plata, Animas and Florida Rivers. The former is recorded as 45,873 acres; the latter is recorded as 17,878 acres. Currently, 13,300 of these acres are irrigated by "white" or "Anglo" (both terms have been used over the years) farmers and ranchers on the Mancos; 10,000 acres on the La Plata. Because there is a slight excess of supply (capacity) on the Animas River, only in years of less than normal flow would the municipal use of water in Durango and downstream New Mexico cities adversely affect the Southern Ute Tribe. Even though the latter use has value and properly could be paid to the Tribe an estimated 30% of the time in each decade, we will omit that cost or benefit in the calculations which follow.

On the assumption that the Winters doctrine had been applied by the Federal Government upon its statement in 1907, development of the Tribes water rights most likely would have taken place in the decade that followed. Our evaluation, therefore, relates to the seventy year period between 1917 and 1987, when the beneficial application of those rights could have been applied.

Applying the market value of lands and the earning power on the productivity of irrigable lands in the San Juan Basin of Colorado, there has been, minimally, a cumulative dollar loss to the two Tribes of $162,400,000. Admittedly, this dollar amount is not corrected for unusual periods of inflated values and/or high market sales dollars following the mid-1930s and subsequent to World War II. Some economists would argue that the loss more closely touches $320,000,000, but even the most conservative, using the discount tables established over the years by the United States Bureau of Reclamation, would argue against the figure we have stated here. If one were to take the volume of data utilized, the criteria applied and the results stated in the Animas-La Plata Irrigation Projects, "A Re-examination of Regional Benefits and Costs" completed and published in September, 1984, our $162 million figure stated here is indeed well below what both methods and data in that ninety-six page document will reveal upon careful examination.

Another way to approach an evaluation is the earning power denied a minimum of 2,500 adults as Tribal members who would have been involved in the agricultural productivity, through good times and bad (economically), since 1917, under developed water rights applied solely to agricultural economics. Here, we also come up with a most conservative number, since it is not unlikely that the Tribes would have also utilized their water rights in the production of minerals in the region, if not in the refining of mineral production by industrial plants on their respective reservations. If we had assumed that even 25% of this period had been applied equally between agricultural production and industrial mining and production, the figure that we state here would expand in a quantum manner.

However, let us apply the wage and salary loss to the least productive economy -- agricultural labor and management wages and salaries. Over and above the earning power that can be expertly evaluated since 1952, alone, the increased earned personal income would have been, minimally, $218,750,000. In the period prior to 1952, utilizing local data sources relating to the Four Corners area, that loss was no less than $85,000,000. Wages and salaries denied by virtue of a non-fulfillment of a Federal obligation can be minimally stated as $306,250,000.

It is not our intent to shock the Committee by pointing out that, technically, you can add together the personal income loss and the market value/capital earnings loss. That figure would shock you because it exceeds the Federal cost of the proposed cost-shared development of the Animas-La Plata Reclamation Project: namely, $468,650,000. Including the cost-sharing contribution of the States of New Mexico and Colorado and repayment provisions, the Committee must respectfullly note that a figure in excess of $500,000,000 will be required by the completion of the Project.

However, the COLORADO FORUM emphasizes that if the Indian Tribes litigate, we have found no agency, yet, which will assert that the cost of litigation will be less than $15,000,000. The reason is clear -- the present landholders who are "white" or "Anglo" and have been irrigating 23,000 acres of the 63,571 acres of record in the current agreement as "irrigable" lands will be parties, individually, corporately and/or collectively to court suits which probably will demand several hundred separate settlements in equity. Add to that the conservative estimate of $62,000,000 of claims for present land and real property values for those who would be displaced, not including "damages" which indeed courts do award. Then, you have $77,000,000 minimally to add to either of the prior figures or to both of the figures, which indeed the COLORADO FORUM still considers the "conservative" approach.

In short, you can end up with three "minimum totals" -- the first two of which omit its opposite counterpart. Candidly, we must say that in equity and moral equivalency, the two Indian Tribes could not and would not omit one or the other of the "base totals" noted heretofore.

(1) Minimum total (market value + displacement costs): $239,400,000;

(2) Minimum total (earning power loss + displacement costs): $383,250,000; or

(3) Minimum total (combined market/earning loss + displacement costs): $545,650,000

The Real Responsibility

However, the COLORADO FORUM must emphasize once again, please face up to your real responsibility: (1) to recognize the uniqueness of the negotiated eight-party agreement which deals with the Indian Tribal rights settlement proposed in S.1415 and which requires no litigation, an achievement in itself; and (2) to face the compelling demands on the Federal Government through the Congress and Executive Departments to address the Indian Rights question as superior to any other local, regional or provincial interest expressed by any of the Basin States of the Colorado River.

If the water management teams at all levels of government in the Lower Basin States and the U.S. Department of Interior, itself, cannot work out agreements relating to how the Indian Tribes might market from 25,000 to 60,000 acre feet of their own water without adversely affecting any other right claimed by any of the preceding entities noted in this sentence, then we can assure you that business leaders of good conscience in all three States -- Colorado, Arizona, and Southern California -- can indeed mediate and conciliate in this arena of concern. This assertion relieves no one of you, however, from the responsibility that is indeed yours as our elected United States Senators.

We are very much counting on your own statesmanship and political conscience, collectively prevailing, with regard to the early mark-up and passage of S. 1415

STATEMENT OF JERRY C. KEMPF, VICE PRESIDENT
COLORADO-UTE ELECTRIC ASSOCIATION, INC.
BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS AND WATER AND POWER SUBCOMMITTEE OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES OF THE UNITED STATES SENATE

HEARINGS ON S. 1415
WASHINGTON, D.C.
December 3, 1987

My name is Jerry C. Kempf. I am Vice President of Governmental Affairs for Colorado-Ute Electric Association (Colorado-Ute). Colorado-Ute is engaged in the generation and transmission of electric power and energy to fourteen rural electric cooperatives serving over 190,000 customers in 47 of the 63 counties in the State of Colorado. Colorado-Ute is itself a rural electric cooperative owned and controlled by the 14 distribution cooperatives it supplies at wholesale. Colorado-Ute and its member systems constitute the second largest supplier of electricity in Colorado, serving a population of about 600,000.

S.1415 proposes a thirty-year straight-line amortization schedule for repayment of the irrigation assistance costs of the Animas-La Plata Project in Colorado. Some power interests associated with federal reclamation projects in western United States are concerned because, if enacted, this proposal would change existing irrigation assistance repayment policy. Colorado-Ute Electric does not share this concern, and supports the proposed amortization schedule.

The Western Area Power Administration, which oversees the distribution and marketing of federal hydroelectric energy produced at the hydroelectric power plants, on the Colorado River was asked to study the impact that the proposed change in repayment policy under S.1415 would have on Colorado River Storage Project power rates. The Western Area Power Administration concluded that 30-year straight-line amortization could be accomplished without a significant impact on the power rates charged to CRSP customers. This is indeed a fortunate and unique circumstance.

The partnership between water and power interests in western United States has been one of mutual cooperation and benefit. Power customers have historically met their commitment to repay the irrigation costs of federal reclamation projects such as projects built under the Colorado River Storage Project Act. Water and power interests have cooperated to maximize power production at all of the major mainstem hydroelectric producing reservoir sites on the Colorado River. This cooperation has enabled both interests to maximize the benefits available from multi-purpose water storage projects. The ultimate benefits have accrued, not only to power customers, but also to farmers and other citizens of the United States who have shared the economic benefits of water development in the West.

Colorado-Ute Electric Association urges members of the Committee to view this legislation favorably. Construction of the Animas-

La Plata Project will fulfill commitments made by the United States Government not only to the Ute Indian Tribes but also to customers of Colorado-Ute's member systems. The citizens of Colorado will benefit from the electric energy supplied by the hydroelectric power plants on the Colorado River and be able to make beneficial use of their share of the waters of the Colorado River. This beneficial use was promised to them under the provisions of the Upper Colorado River Compact and the previous enactments by the United States Congress. Passage of S. 1415 is necessary if past commitments are to be honored.

Thank you very much for your consideration.

BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS
AND THE WATER AND POWER SUBCOMMITTEE
OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES

SENATOR DANIEL K. INOUYE - COMMITTEE CHAIRMAN
SELECT COMMITTEE ON INDIAN AFFAIRS
SENATOR BILL BRADLEY - SUBCOMMITTEE CHAIRMAN

S. 1415

TESTIMONY OF LARRY D. SIMPSON ON BEHALF OF COLORADO WATER CONGRESS AND NORTHERN COLORADO WATER CONSERVANCY DISTRICT CONCERNING THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT AND THE ANIMAS-LA PLATA PROJECT

December 3, 1987

Mr. Chairman and Members of the Committee:

I am Larry D. Simpson, an Officer and Director of the Colorado Water Congress and General Manager of the Northern Colorado Water Conservancy District. The Colorado Water Congress is a statewide association formed under the provisions of Colorado law for the purpose of representing the State's broad interest in water matters. The twelve hundred members of the Colorado Water Congress include municipalities, state agencies, water conservancy and water conservation districts, irrigation companies, farmers, businesses and professional groups interested in the sound conservation and management of Colorado's water resources. The Northern Colorado Water Conservancy District, a member of the Water Congress, provides water to 750,000 acres of irrigated land and 26 cities and domestic water companies in northeastern Colorado. The District's boundaries include parts of seven counties and extend from Boulder to Fort Collins and from Platteville, below Denver, along the South Platte River to the Nebraska state line.

The Colorado Water Congress and the Northern District are proud to appear before the Committee today on behalf of our Colorado neighbors -- the Southern Utes, the Ute Mountain Utes and the many other residents of southwestern Colorado who have achieved a pioneering settlement of Indian reserved water rights claims in connection with their longstanding effort to build the Animas-La Plata Project.

In 1968 the Congress of the United States provided that the Animas-La Plata Project shall proceed ". . . concurrently with the construction of the Central Arizona Project." Though the Central Arizona Project has begun water deliveries, construction of the Animas-La Plata Project has yet to begin. The State of Colorado and the people of southwestern Colorado have agreed to a very significant cost sharing provision in connection with the Animas-La Plata Project. The Ute tribes have agreed to share the water resource of southwestern Colorado with non-Indians. The Indian settlement and construction of the Animas-La Plata Project will significantly benefit Colorado and New Mexico and help to fulfill historic commitments made in the 1922 Colorado River Compact, the 1948 Upper Colorado River Compact, and the many project authorizations by which the Lower Colorado River Basin has developed its compact allocations.

A number of vital water projects remain to be built in Colorado. A number of these will require financial assistance in the State of Colorado, yet the Colorado Water Resources and Power Development Authority has committed a large portion of its available funds towards the implementation of the Ute Indian settlement and the construction of the Animas-La Plata Project. This has been accomplished with the consent of the Colorado legislature and the support of the Colorado Water Congress, demonstrating the importance which Coloradoans attach to the legislation which you consider today.

Some controversy has arisen over possible off-reservation use of Indian water. The Ute tribes and the supporters of the Animas-La Plata Project are not asking Congress to legislate an endorsement of Indian water rights sales off the reservation. Whether federal reserved water rights can be changed to off-reservation use is a matter left to the Courts, where all interested parties may be heard.

We urge the Committee to proceed as requested by the Ute tribes, the State of Colorado, and the rest of the individuals and organizations who have worked so long and hard for the Animas-La Plata Project.

STATEMENT OF
FRED W. KLATT III, MAYOR
CITY OF DURANGO, COLORADO
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS AND THE WATER AND POWER SUBCOMMITTEE OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
regarding
S. 1415
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987
Washington, D.C. - December 3, 1987

Mr. Chairman and Members of the Committee:

My name is Fred Klatt. As Mayor of the City of Durango, I am proud that the Durango City Council unanimously passed the attached Resolution in support of the Animas-La Plata Project. To achieve the construction of that Project, which is the central focus of the Colorado Ute Tribes Water Rights Final Settlement Agreement, I am here to request your favorable action on S. 1415. Without such favorable action, the socio-economic climate of southwestern Colorado would be adversely impacted.

Durango is a lovely, lively city. Durango's economy is a blend of tourism, government, farming, ranching, mining and the indirect effects of higher education. We are fortunate to have facilities in Durango far in excess of those generally found in a town of 12,000 people. But what really sets my home town apart is the unique relationship that exists among the various groups who live in our beautiful area.

A relationship of trust and good will exists among the earliest settlers, the Ute Mountain Ute and Southern Ute Indian Tribes, the later arriving Hispanic peoples, and the Anglos and Oriental people who have come to this area in the last 100 years. We are blessed with a blending of diverse cultures. Trust and cooperation exist on a level that we accept as normal, but which folks from other areas find exceptional and extraordinary. We like it that way and this unique relationship helps to get things accomplished.

There is a cloud on the horizon, however. Our friends, the Southern Ute and Ute Mountain Ute Indians, are faced with a water problem that has plagued southwestern Colorado for centuries. The problem is not really a lack of water, but a lack of the means to store the water that runs through our area. To compound the problem, much of the water that all our people can capture and utilize locally is, in fact, the property of the Indian Tribes. Cooperation by the many groups in our area, as evidenced by the Colorado Ute Indian Water Rights Final Settlement Agreement, has avoided the necessity of litigation over the Tribes' water rights. If that Agreement cannot be implemented, however, the inevitable litigation will divide our community, create bitterness and be tremendously costly to everyone concerned. This must not happen.

You have before you, in S. 1415, the means to allow the Ute Indian Tribes to grow to their full potential and to benefit the entire southwestern corner of Colorado by ensuring a constant water supply to everyone in our area.

Yesterday we flew out of an airport in Durango that would not have been established without the assistance and cooperation of the Ute Indians over 30 years ago. That spirit of trust, mutual respect and cooperation cannot be allowed to disappear. You have the key to ensure that it is maintained well into the next century. Your support, and the support of the entire Congress, for S. 1415 will be greatly appreciated by all the people in our area.

RESOLUTION R-1987-32

A RESOLUTION CONCERNING THE ANIMAS LA PLATA PROJECT

WHEREAS, the Animas La Plata Project objectives include storage capability for southwest Colorado that will provide a dependable water source for municipal, industrial and agricultural uses for the present and future growth needs of this region; and

WHEREAS, the Animas La Plata Project is the cornerstone for settlement of the water right claims of our neighbors, the Southern Ute and Ute Mountain Ute Indian Tribes, yielding project, industrial and irrigation water for their lands; and

WHEREAS, other benefits are ascribed to the approval of the Animas La Plata Project including the improved employment atmosphere created during the actual construction phase and the associated services needed to support the construction related population. And, based upon the buying power of a healthy economy, Durango will recognize an increase in sales tax collection, which is the major revenue source for the provision of city and county services; and

WHEREAS, the additional recreational facilities available as a result of the project will serve to enhance an area already noted for its diverse vacation and leisure time opportunities; and

WHEREAS, the City Council believes the Animas La Plata Project to be a significant and consequential issue of our time, worthy of serious deliberation and informed decision.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Durango, Colorado, in regular meeting assembled, that:

The City Council believes that the Animas La Plata Project will provide dependable domestic, industrial and agricultural water; it will resolve the tribal claims and provide a quantity of water for the development of reservation lands; it will favorably impact southwest Colorado through job availability and an improved economic environment; and it will create a nearby recreation facility with attendant businesses and services.

The opportunity to vote on an event of this magnitude is a responsibility which should be accepted and embraced by all eligible voters, and this voting power should be exercised with knowledge of the issues.

The City Council favors a vote of approval for the Animas La Plata Project.

Approved and adopted this 17th day of November, 1987.

CITY OF DURANGO

Fred W. Klatt III
Fred W. Klatt III
Mayor

Linda D. Yeager
Linda D. Yeager
City Clerk

STATEMENT OF
BUD DEERING, CHAIRMAN
LA PLATA COUNTY COMMISSIONERS
before the
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
and
THE WATER AND POWER SUBCOMMITTEE
OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
regarding
S. 1415
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987
Washington, D.C. - December 3, 1987

Mr. Chairman and Members of the Committee:

I am "Bud" Deering, Chairman of the Board of County Commissioners of La Plata County, Colorado. The Commissioners of La Plata County have long recognized the need for the Animas-La Plata Project. Commissioners for the last eighteen years have publicly supported the Project because the county-wide benefits are obvious and the county-wide need is critical. The vast majority of county residents favor conserving our water resources, preserving our water rights, and maintaining our cordial and supportive relationship with our Indian brothers and sisters.

As a County Commissioner I must see to the interests of all our La Plata County residents, including those who reside on the Southern Ute Indian Reservation. Additionally, I fully support the efforts made by Montezuma County and the Ute Mountain Ute Indian Tribe. There is an excellent working relationship between the Tribe and the non-Indian communities of our area. La Plata County, for example, has cooperated with the Tribe on road construction and maintenance, jurisdictional issues, land for our college, and in numerous other areas. Only on the issue of water is there any real potential for a parting of ways.

The tributaries of the San Juan River serve the municipal, domestic, industrial, and agricultural needs of both Indians and non-Indians in southwest Colorado. These tributaries are the subject of conflicting claims. The cost of litigating these conflicting water rights is of such magnitude that interested parties conducted thousands of hours of negotiations over the past two years to reach a settlement of the Colorado Ute Tribes' water rights. This cooperative effort should not be wasted.

The Animas-La Plata Project is the heart of this negotiated settlement. The Southern Ute Indian Tribe has agreed to a specific amount of water from the Project which would allow existing water rights to continue unabated as well as provide for large scale non-Indian water usage without detriment to any party.

Not only will the Animas-La Plata Project provide a secure water source for all citizens of our area, but the Project is needed to provide for the growth of our area. The dryland farmers of La Plata County are in great need of assistance. The uncertainties of the weather often destroy crops or severely diminish crop values. Agriculture is an important economic factor in La Plata County and we can foresee the tremendous boost to the economy if a consistent supply of water is secured through the Animas-La Plata Project. The Project will supply continuous irrigation to 70,000 acres where only 10,000 are irrigated now. This in turn would help establish an economic independence for our area hitherto unknown, and ensure that children raised in our county can find work there.

La Plata County is heavily dependent on tourism. Ridge's Basin Reservoir will provide a much needed water based recreation area in the heart of the county.

The cities and towns in our area have grown rapidly. The Project is the answer to a stable and known water supply for municipalities in both Colorado and New Mexico.

The Southern Ute Indian Tribe's water would assist in major coal development by the Tribe. Coal development would alleviate wide-scale tribal unemployment. Environmental concerns are well protected. I know of no group of individuals more naturally attuned to protecting our environment than our Indian neighbors.

The very future of southwestern Colorado turns upon the construction of the Animas-La Plata Project. As you know, I am an elected official, as are each of you, and it will be to the credit of all of us if you unanimously support S. 1415 to implement the Colorado Ute Indian Tribes' Settlement Agreement.

STATEMENT OF
DAVID POTTER, GENERAL MANAGER
LA PLATA ELECTRIC ASSOCIATION, INC.
before the
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
and
THE WATER AND POWER SUBCOMMITTEE
OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
regarding
S. 1415
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987
Washington, D.C. - December 3, 1987

My name is David Potter, and I am Manager of La Plata Electric Association, Inc., a non-profit, member-owned corporation established to transmit and distribute electricity within southwest Colorado. La Plata Electric Association is one of fourteen member associations in Colorado-Ute Electric Association, Inc. which generates and transmits power to its members.

As a major service provider for southwest Colorado, La Plata Electric Association is a strong supporter of the Animas-La Plata Project. The Animas-La Plata Project will help stabilize electric rates. The Board of Directors of the Association studied the Project with care and at length and concluded that revenue growth in the Association's service area as a result of the Project will keep rates at near current levels without inflation for the foreseeable future. In addition, the electrical facilities associated with the Project will help improve the Association's system reliability since system upgrading is an integral component of the water delivery portion of the Project.

Further, the Animas-La Plata Project significantly enhances the sagging economy of southwest Colorado. The Association must continue to support economic development in its service area in order to assure steady growth and a proven market. The value of many area homes has dropped in the past two years and raw land has lost value even faster. With the construction of the Animas-La Plata Project area property values are projected to return to their previous levels. The Animas-La Plata Project will encourage diversification of the area economy. The availability of water is critical in attracting new industry as well as supporting current growth. The Project will increase tourism; for example, Ridges Basin Reservoir will be a four-mile long lake just outside Durango with fishing and camping facilities planned.

Obviously, the Project will create jobs during the twelve years of construction and, further, will provide for secondary jobs in farming and agriculture. The Project would provide as many as 1,054 jobs directly related to its construction and another 1,159 indirectly related jobs at its peak, which would come about 1997. Operation of the Project will require several full time positions over the next several generations. The unemployment rate in the Four Corners area is among the highest in the state and job security offered by construction is one of the most attractive aspects of the Project.

The U.S. Bureau of Reclamation estimated that total income generated by Project construction would range from $375,000 the first year to more than $38 million in the tenth year. In all, the direct and indirect income would approach $170 million in new income over the twelve construction years.

The Project's economic impact during peak construction would exceed that of the state supported Fort Lewis College in Durango, one of the leading employers of the county. The Project's economic appeal is irresistible, particularly as it provides a means of escaping the typical boom or bust economic cycle which has plagued Durango since its early days.

Finally, as a Project proponent I am intensely aware that the Project provides the only readily available vehicle to satisfy the Indian reserved water rights claims. It should be noted that the residents of our service area appreciate the environment, the area's recreational opportunities and the security of small town life. By using our natural resources to create new jobs and improve our area's economy, we can preserve the lifestyle so important to our community.

I ask your support for S. 1415 and the implementation of the Colorado Ute Indian Tribes Final Water Settlement Agreement. The Animas-La Plata Project is crucial to the economic development of our area.

Thank you.

Joint Statement
of
Department of Water Resources of Arizona,
Colorado River Board of California, and
Colorado River Commission of Nevada
on
S. 1415
before the
Committee on Energy and Natural Resources
and the
Select Committee on Indian Affairs
United States Senate
December 3, 1987

Mr. Chairman, I am Ralph Hunsaker. I am an attorney with O'Connor, Cavanagh, Anderson, Westover, Killingsworth & Beshears of Phoenix, Arizona. I represent the Central Arizona Water Conservation District; however, today I am also appearing on behalf of the Department of Water Resources of Arizona, the Colorado River Board of California, and the Colorado River Commission of Nevada. These three agencies have the responsibility to speak for their states on policy with regard to the management and use of the Colorado River. I am accompanied by Alan Kleinman, Director of the Arizona Department of Water Resources, Dennis Underwood, Executive Director of the Colorado River Board of California, and Jack Stonehocker, Director of the Colorado River Commission of Nevada.

We appreciate the opportunity to testify before your Committees on S. 1415.

The issue of Indian and other reserved water rights continues to be one of the most troubling to deal with in areas of the western United States where water is in short supply. The Winters doctrine of Indian reserved water rights is a recognized aspect of western water law, and the right of Indian tribes to develop their reservation lands is unquestioned. However, because Winters rights do not depend on past use of water, uncertainty as to the magnitude of Indian water rights claims and if and when they will actually be exercised makes administration of rights difficult and subjects long standing junior appropriators to having their use of water cut back or terminated, disrupting the economies they represent. This is an unavoidable consequence of the Winters right generally.

However, in the past few years, the Department of the Interior has made a significant change in course in dealing with Winters rights which has worsened the uncertainty problem. It now views them as a financial tool to accomplish Indian water rights settlements rather than as an opportunity for land development within reservation boundaries, which is the rationale the courts have used in development of the doctrine. The Winters doctrine, which has been developed entirely through court action, has never been extended by a court to permit sale of the water apart from the land. Traditionally, the Department, to meet Indian financial needs or to settle monetary claims of tribes, has requested appropriations from Congress. It apparently now views sale of these water rights outside of reservation boundaries as a money making opportunity and a way to reduce federal budgetary needs.

Further discussion of the issue of whether Winters rights may be sold for use off the reservation and apart from the land is provided in an attachment to this statement.

The Colorado Ute Indian Water Rights Final Settlement Agreement of December 10, 1986 represents a complex and apparently comprehensive resolution of Winters water rights for the Ute Mountain Ute and Southern Ute Tribes on the stream systems involved. Two important principles regarding off reservation use within Colorado are a part of that settlement: (1) the requirement that Winters rights be subject to state administration of water rights and (2) subordination of the priority dates of each Winters right to protect junior appropriators. We feel that these two principles represent a significant advance for the administration of Winters rights and believe they should be considered in every settlement of this character.

Our concern with the settlement is found in Article V B(b) of the Settlement Agreement. That language states:

"Solely as a compromise for the purposes of this settlement, the parties agree that the Tribes may, under this Agreement, use the project and non-project reserved water rights secured to the

Tribes by this Agreement outside the boundaries of their reservations:

* * *

b. outside the State to the extent permitted by any:

(i) State law;
(ii) Federal law;
(iii) interstate compact; or
(iv) international treaty

that pertains to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation or quality of those waters; provided, however, that nothing in this Agreement shall be construed to establish, address, or prejudice whether, or the extent to which, any of the aforementioned laws do or do not permit, govern or apply to the use of the Tribes' water outside the State."

Management and use of Colorado River water is governed by a series of interstate compacts, international treaties, United States Supreme Court decrees, federal and state statutes and contracts collectively described as "The Law of the River" which apportions water rights between basins and among the seven Colorado River Basin states and establishes a priority system to the use of Colorado River water. These documents, painstakingly developed over the past 65 years, have been relied upon institutionally by the seven Colorado River Basin states in the development of their apportioned Colorado River water and, in the case of Mexico, its annual guaranteed delivery of river water pursuant to the Mexican Water Treaty between the United States and Mexico.

A basic premise of the river's priority of use system is that water which cannot be beneficially used by a Colorado River right holder becomes available to meet the water needs of lower priority right users, which may not otherwise be met. By the same token, unused apportionments of one state can be beneficially used by another state until such time as those waters are needed by the state to which the water was apportioned. Given that the river has been fully apportioned and that the states' total apportionments and the delivery obligations pursuant to the Mexican Water Treaty far exceed the river's long-term supply, the selling and leasing of a state's unused apportioned water for use in another state by any entity is inconsistent with The Law of the River and would severely injure other river users. It would allow a party with no Colorado River water rights to obtain priorities to and take Colorado River water away from entities and states with long standing rights.

As an example of the importance of The Law of the River apportionment and priority scheme one only needs to review the testimony and reports leading up to the passage of Public Law 90-537, the Colorado River Basin Project Act, which among others authorized the Animas - La Plata Project and the Central Arizona Project. The feasibility of the Central Arizona Project was and is dependent upon receiving all water that is not needed in the Upper Basin. If this water is sold, it would diminish the yield of the Central Arizona Project. The Congress was keenly aware of this in its authorization of the project.

The Indian reservations involved in the Settlement Agreement are located in Colorado and transfer of their rights as set forth in the agreement outside Colorado to another state within the Colorado River system would be inconsistent with and therefore not permitted by The Law of the River.

Attached to this statement is a more in depth review of The Law of the River with regard to the Settlement Agreement. The key provisions of The Law of the River on this issue are the Colorado River Compact of 1922, the Boulder Canyon Project Act of 1928, the Upper Colorado River Basin Compact of 1948 and several Supreme Court decisions and decrees in Arizona v. California. Running through each of these is the basic theme of protecting the rights and interests of the two basins and each of the states to the use and priorities of their apportioned share of Colorado River water. The apportionment and priority scheme is comprehensive in dealing with the waters of the river, designates quantities and priorities for use within each of the states, and identifies which state will be charged with the use involved.

The foundation document is the 1922 Colorado River Compact which divided the water of the Colorado River System between the Upper Basin states of Colorado, New Mexico, Utah and Wyoming and the Lower Basin states of Arizona, California, and Nevada. The Compact apportions from the Colorado River System to each of the two Basins "the exclusive beneficial consumptive use to 7,500,000 acre-feet of water per annum". It requires the Upper Division states to allow at least 75,000,000 acre-feet of water to arrive at Lee Ferry every ten years. It also provides:

> "The States of the Upper Division shall not withhold water, and the states of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses." [Article III (e)].

The development of the Lower Basin and apportionment of its 7,500,000 acre-feet share under the Compact began with Congressional passage of the 1928 Boulder Canyon Project Act. In so doing, Congress explicitly approved the Compact and made the rights of the United States to Colorado River System water, "as well as the rights of those claiming under the United States," subject to the Compact. This presumably makes Indian reservations claiming Colorado River System waters, such as the Ute Mountain Ute and Southern Ute Tribes, subject to the Compact.

This Act, in addition to authorizing construction of Hoover Dam and the All-American Canal, preempted state water rights administration of the mainstream of the River within the Lower Basin and made a contract with the Secretary mandatory for any diversion of water.

The Supreme Court in Arizona v. California, 373 U.S. 546 1963 (Opinion), 376 U.S. 340 (1964) (Decree), adopted the apportionment scheme of the Boulder Canyon Project Act and also recognized broad discretion in the Secretary of the Interior to allocate and distribute waters from the mainstream of the Colorado River available for consumptive use in the Lower Basin.

Unlike the Lower Basin States, which had to rely on the Supreme Court to finally apportion the Lower Basin share of Colorado River Compact waters, the states with claims to the Upper Basin share were able to agree on a division among them. The 1948 Upper Colorado River Basin Compact was signed by Arizona, Colorado, New Mexico, Utah, and Wyoming.

These documents and others making up The Law of the River bar the interstate and interbasin transfer of the Winters water rights of the Ute Indian reservations. They require that the user basin or user state be charged with the use of the water under the water accounting system they establish. They do not recognize or establish any procedures whereby such transfers could be accommodated or dealt with or the transferring state could be charged with the water use. In addition, while priority dates are set forth in the Settlement Agreement for use of these waters within the State of Colorado, there is no process for evaluating priorities across state lines and accommodating the impact on those in other states.

The sale of Winters water within the State of Colorado has been considered in some detail in the Settlement Agreement. Priority dates and administrative problems have been settled and the rights of junior appropriators have been protected. The opposite is true with regard to interbasin and interstate sales. The disclaimer language in Article V of the Settlement Agreement does not begin to answer these questions and essentially abandons all of them once again to the courts, a result none of the states wish to contemplate. The purpose of the Settlement Agreement was to eliminate litigation.

We therefore believe that this provision is ill-conceived and will only serve to disrupt the entire structure of rights and priorities to and use of Colorado River water developed and relied upon over the past 65 years since the Compact was agreed upon. We ask that the legislation be amended to prohibit interstate and interbasin sales and to protect states and individuals not signatory to the Settlement Agreement. We have attached proposed amendments to Sections 4, 5 and 11 of S. 1415 to accomplish these results.

As I have indicated, we are greatly concerned about the actual impact and legal implications of Congressional endorsement of the off-reservation use of Winters water rights. The proponents of S. 1415 assert that section 5 of the bill is designed solely to avoid the possible applicability of the general restrictions against alienation of Indian land in the Indian

Non-Intercourse Act (25 U.S.C. 177). However, the broad authorization of section 5 to transfer Winters water "in accordance with Article V of the Agreement" grants unqualified Congressional "approval" of the off-reservation use which is our principal concern. The present disclaimer language in subsection 5 (c) does not adequately negate the implications of such a legislative "authorization". Consequently, we propose simply to modify subsection 5 (a) to remove the possible impediment of the Indian Non-Intercourse Act, which is the proponents' stated objective. This direct approach leaves the validity of the off-reservation use dependent on a source other than the statute, while new subsection 5 (c) (2) expressly negates the Settlement Agreement and the statute as the source of that authority, except as to parties to the Settlement Agreement.

With respect to our second concern, that off-reservation use might violate The Law of the River, we have proposed a two pronged defense to that possibility. We believe that out-of-state uses, which present the most serious problem for the reasons I have already outlined, should be prohibited and would add a new subsection 5 (b) (3) to so provide. This should be acceptable to the Tribes, since their representatives advise us that they have no plans for any such transactions.

For in-state uses, we propose in a new subsection 5 (b) (4) that the Secretary be required to give notice and an opportunity to comment on such a proposal in order to permit public evaluation of a specific proposed transaction to determine whether it conflicts with The Law of the River. This is a fair procedure and should not impose any undue burden on the Tribes.

We propose to amend section 5 (c) to conform to our proposed amendment of subsection 5 (a), *i.e.*, that this Act would not constitute a statutory authorization for off-reservation use. Subsection 5 (c) (1) would be amended to make it clear that the bill is not intended to amend The Law of the River. Since the *Boulder Canyon Project Act*, the *Colorado River Storage Project Act* and the *Colorado River Basin Project Act* are all supplemental to the "reclamation laws" which are "waived" by Section 4 (b), the latter section is also made subject to the disclaimer language in section 5 (c) (1).

The legal attributes of any *existing* federal implied water rights that may attach to the Tribes' reservations can only be determined by the courts. Consequently, new subsection 5 (c) (2) of our amendment makes it clear that the legislation and the Settlement Agreement (1) do not validate any claim by the Tribes of their legal right to make off-reservation uses under any reserved water right which may attach to their reservations, (2) shall not constitute a defense to any claim or injury by a party who is not signatory to the Settlement Agreement and (3) shall have no precedential value with respect to any other legislation or litigation.

Because of the implications in Article V of the Settlement Agreement which our proposed amendments to S. 1415 are designed to neutralize, we propose an amendment to section 11 of the bill to reverse the specified rule of construction by providing that the Settlement Agreement shall be construed in a manner consistent with the Act, not vice-versa.

Mr. Chairman, the three Colorado River Basin states that I speak for today have indicated that they may wish to submit additional materials on this important piece of legislation. I, therefore, request that the record be held open to allow for this.

Proposed Amendments to S. 1415
(Deletions struck through; additions underscored)

SEC. 4. PROJECT RESERVED WATERS.

* * *

(b) APPLICATION OF FEDERAL RECLAMATION LAWS.--With respect to the project reserved water supplied to the Tribes or their lessees from the Dolores and Animas-La Plata projects and subject to the limitations of subsection 5(c), Federal reclamation laws shall not apply to those project reserved waters except to the extent that those laws may also apply to the other reserved waters of the Tribes. Federal reclamation laws shall not be waived or modified by this subsection insofar as those laws are required to effectuate the terms and conditions contained in article III, section A, subsection 1 and 2, and Article III, section B, subsection 1 of the Agreement.

* * *

SEC. 5. TRIBAL WATER USE CONTRACTS.

~~(a) GENERAL AUTHORITY.--Subject to the approval of the Secretary and to the provisions of its constitution, each Tribe is authorized to enter into water use contracts to sell, exchange, lease, or otherwise temporarily dispose of water in accordance with Article V of the Agreement, but the Tribes shall not permanently alienate any water right. The maximum term of each such water use contract, including all renewals, shall not exceed 50 years in duration.~~

(a) WAIVER OF INDIAN NON-INTERCOURSE ACT - No otherwise valid contract entered into by either Tribe for the sale, exchange, lease or other temporary disposition of water to which it may be entitled under existing law shall be subject to the provisions of 25 U.S.C. 177; provided that (1) the Tribes shall not permanently alienate any water rights or enter into Tribal water use contracts which exceed 50 years in duration, including all renewals, and (2) such Tribal water use contracts shall be subject to approval by the Secretary as provided by subsection (b) of this section.

(b) APPROVAL BY SECRETARY.--

* * *

(3) No Tribal water use contract shall be approved or implemented for the use of that water outside the State of Colorado pursuant to this statute or the Agreement.

(4) Whenever the Secretary is requested to approve a Tribal water use contract for off-reservation use of water within the State of Colorado, he shall publish a notice of such request in the Federal Register and afford interested parties not less than 60 days within which to comment on such proposal. The Secretary shall make written findings in support of his decision and publish the text of his decision in the Federal Register, which decision shall not become effective until 60 days thereafter. The Secretary's decision to approve or disapprove any proposed contract shall be

subject to judicial review in accordance with the Administrative Procedure Act (5 U.S.C. §702).

~~(3)~~ (5) Where the Secretary has approved a water use contract, the United States shall not thereafter be directly or indirectly liable for losses sustained by either Tribe under such water use contract.

(c) ~~SCOPE OF AUTHORIZATION~~. LIMITATIONS--(1) The ~~authorization provided for in subsection~~ provisions of subsections (a) and (b) shall not amend, construe, supersede, or preempt any State law, Federal law or contracts, interstate compacts, United States Supreme Court decrees, or international treaty that pertains exclusively to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation, or quality of those waters.

(2) Neither this statute nor the Agreement to which it relates validate or are intended or shall be construed to validate any claims with respect to the Tribes' ability to make off-reservation use of water, nor shall this statute or that Agreement constitute a defense to a claim by any party not signatory to that Agreement. The provision of the Agreement which permits the Tribes to enter into water use contracts for the delivery of water outside the reservation and within the State of Colorado, pursuant to the Agreement and subject to its restrictions with respect to

conformity to State administration of water rights, is made explicitly for the purpose of settling the existing and prospective lawsuits among the signatory parties. This tribal opportunity shall have no precedential value in any other legislation or litigation.

* * *

SEC. 11. RULE OF CONSTRUCTION.

(a) IN GENERAL.--~~This Act~~ The Agreement shall be construed in a manner consistent with ~~the Agreement~~ this Act.

ATTACHMENT TO
JOINT STATEMENT
OF
DEPARTMENT OF WATER RESOURCES
OF ARIZONA, COLORADO RIVER BOARD
OF CALIFORNIA, AND COLORADO
RIVER COMMISSION OF NEVADA
ON
S. 1415
REGARDING "THE LAW
OF THE RIVER"

DECEMBER 3, 1987

The current, proposed legislation seeks to implement the Colorado Ute Indian Water Rights Final Settlement Agreement, dated December 10, 1986. Article V(B)(b) of that Settlement Agreement authorizes the Ute Mountain Ute and Southern Ute Indian Tribes to use their water rights secured under said agreement not only outside the boundaries of their reservations, but "outside the State [of Colorado] to the extent permitted by any:

"(i) State law;
"(ii) Federal law;
"(iii) interstate compact; or
"(iv) International treaty

that pertains to the Colorado River or its tributaries. . . ." (Settlement Agreement, p. 60.) However, the aforementioned collection of laws (part of what is referred to as "The Law of the River") do not permit out-of-state transfers to any extent and therefore the language of the agreement creates a false impression by implying that such transfers may be legally permitted.

"The Law of the River" is that collection of interstate compacts, international treaties, court decrees, federal and state statutes, and contracts that control Colorado River operations and the rights and priorities to Colorado River water. The Law of the River is based on a scheme that apportions water rights among states and between basins within the Colorado River System, and a priority system to the use of Colorado River water. A basic premise of the river's priority to use system is that water which cannot be beneficially used by a Colorado River right holder becomes available to meet the needs of lower priority right users, which needs may not otherwise be met. By the same token, unused apportionments of one state can be beneficially used by another state until such time that those waters are needed by the state for which the water was apportioned.

The two Indian Tribes involved herein are located in Colorado, and any possible transfer of their rights outside Colorado to another state or to another basin within the Colorado River System would impact upon, be contrary to, and thus not be permitted by the apportionment and priority scheme of The Law of the River.

I. The Law of the River

a) The Colorado River Compact

The foundation document is the 1922 Colorado River Compact by which the seven western states in the Colorado River System divided the waters in that system between two basins. The Compact defines the Colorado River System as that portion of the Colorado River and its tributaries within the United States [Article II(a)]. It defines Upper and Lower Basins of the Colorado River System according to where waters from those areas drain into the Colorado River. Those parts of Arizona, Colorado, New Mexico, Utah, and Wyoming that naturally drain into the Colorado above Lee Ferry are defined as the Upper Basin; those parts of Arizona, California, Nevada, New Mexico, and Utah that drain into the Colorado below Lee Ferry are defined as the Lower Basin [Article II(e)(f)(g)]. As is apparent, three of the seven states--Arizona, New Mexico, and Utah--contain areas in both the Upper and Lower Basins. However, Utah and New Mexico, along with Colorado and Wyoming, are defined as Upper Division states while Arizona, along with California and Nevada, are defined as Lower Division states [Article II(c)(d)].

The Compact apportions from the Colorado River System to each of the two Basins "the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum [Article III(a)]. It requires the Upper Division states to allow at least 75,000,000 acre-feet of water to arrive at Lee Ferry every ten years [Article III(d)]. It also requires:

> "The States of the Upper Division shall not withhold water, and the states of the Lower Division shall not require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses." [Article III(e)].

The Compact also protects "present perfected rights" to Colorado River System waters and provides that such rights in the Lower Basin be satisfied out of the stored water once a storage capacity of 5,000,000 acre-feet has been provided on the main Colorado River within or for the benefit of the Lower Basin [Article VIII].

b) Lower Basin Allocations and Development

The development of the Lower Basin and apportionment of its 7,500,000 acre-feet share under the Compact began with Congressional passage of the 1928 Boulder Canyon Project Act (BCPA). In so doing, Congress explicitly approved the Compact [Sec. 13(a)] and made the rights of the United States to Colorado River System water, "as well as the rights of those claiming under the United States," subject to the Compact. [Sec. 13(b).] Indian reservations, such as the Ute Mountain Ute and Southern Ute Tribes, which claim Colorado River System waters under the United States, are therefore subject to the Compact. Congress not only made the Act subject to the terms of the Compact [preamble] but also made the Act effective only upon one of two contingencies: 1) ratification of the Compact by all seven states; or 2) ratification by six of the seven states, including California, plus California's enacting a law limiting its consumptive use share of the Lower Basin apportionment to 4,400,000 acre-feet per year plus not more than one-half of any surplus or unapportioned waters available to the Lower Basin [Sec. 4(a)]. Congress also authorized the three Lower Division states (Arizona, California, Nevada) to enter into an agreement apportioning among them the Lower Basin share and providing for use of tributary water [Sec. 4(a)]. Six states, including California, did ratify the Compact, and California did pass the California Limitation Act, thus making the BCPA effective. However, the three states never agreed on an apportionment of the Lower Basin's share, leaving it to the United States Supreme Court, in Arizona v. California (1963) 373 U.S. 546, to rule that Congress had indeed apportioned the Lower Basin share itself in section 4(a) of the BCPA.

The BCPA promoted Lower Basin development by authorizing construction of what came to be known as Hoover Dam and the All-American Canal. In authorizing construction of the dam, Congress was providing for storage capacity on the main Colorado River, both within and for the benefit of the Lower Basin, far in excess of the 5,000,000 acre-feet mentioned in Article VIII of the Colorado River Compact. The BCPA again mentioned the need to satisfy present perfected rights (sec. 6), but also gave the Secretary of the Interior even broader authority to contract for the delivery of water stored behind the dam to the whole variety of claimants in the Lower Basin, not just to present perfected rights holders. Congress made a contract with the Secretary mandatory for any use of stored water: "No person shall have or be entitled to have the use for any purpose of the water stored as aforesaid except by contract made as herein stated." (Sec. 5).

The Supreme Court, in Arizona v. California, supra, 373 U.S. 546 (Opinion) 376 U.S. 340 (1964) (Decree), adopted the apportionment scheme of the BCPA and also recognized broad discretion in the Secretary of the Interior to contract and distribute Colorado

River System waters available for consumptive use in the Lower Basin. In the 1964 Decree, the Court defined "mainstream" as the mainstream of the Colorado River downstream from Lee Ferry, including reservoirs [Art. I(B)], and defined "waters controlled by the United States" to include all waters in that "mainstream," including reservoirs [Art. I(E)]. The Court then enjoined the United States (i.e., the Secretary of the Interior) from releasing any "waters controlled by the United States" except in accordance with a high priority accorded to the satisfaction of present perfected rights without regard to state lines [Art. II(A)(2-3)] and only in accord with the aforesaid apportionments and "only pursuant to valid contracts" between the Secretary and any "users" in Arizona, California, or Nevada [Art. II(B)(1-3, 5)].

It is thus apparent that any and all Colorado River mainstream and reservoir water below Lee Ferry is controlled by the United States and can only be allocated and distributed in the three Lower Division states pursuant to contract. This is even true as to present perfected rights, where an ongoing process seeks to let contracts to holders of such rights recognized in the Court's 1979 Supplemental Decree (Arizona v. California (1979) 439 U.S. 419. But the vast majority of the three Lower Division states' apportionments had been contracted for years earlier, even before the Court's 1963 decision. In California, prioritized contracts for 5,362,000 acre-feet of consumptive use were made in the early 1930's pursuant to the Seven Party Agreement entered into by major California users in 1931. Similar contracts were entered with Arizona and Nevada in the early 1940's. The Lower Basin's full 7,500,000 share, and more, has been contracted for with priority dates no later than the 1930's and 1940's, and the Secretary must distribute mainstream water in accordance therewith under the Court's mandate in the 1964 Decree in Arizona v. California.

To reaffirm United States administration in accord with the "Law of the River," Article III of the 1964 Decree explicitly enjoins Arizona, California, and Nevada, as well as the major California water user parties to the case, from interfering with "releases and deliveries in conformity with Article II of this decree, of water controlled by the United States;" [Art. III(B)] and

> "From diverting or purporting to authorize the diversion of water from the mainstream the diversion of which has not been authorized by the United States for use in the respective states; and provided further that no party named in this Article and no other user of water in said states shall divert or purport to authorize the diversion of water from the mainstream the diversion of which has not been authorized by the United States for its particular use;" [Art. III(C)]

> "From consuming or purporting to authorize the

> consumptive use of water from the mainstream in excessof the quantities permitted under Article II of the decree." [Art. III(D)].

The 1964 Decree also provides that:

> "Consumptive use of water diverted in one state for consumptive use in another state shall be treated as if diverted in the state for whose benefit it is consumed." [Art. I(K)].

and enjoins the United States as to charging water use:

> "Any mainstream water consumptively used within a state shall be charged to its apportionment, regardless of the purpose for which it was released;" [Art. II(B)(4)].

Articles I(K) and II(B)(4) both mandate charging the apportionment of the State in which water is consumptively used for any water taken from the Colorado River system. These two articles would apply to the five states which were parties to Arizona v. California--Arizona, California, Nevada, New Mexico, and Utah--as well as to the United States on behalf of Indian reservations.

The 1964 Decree allows each Lower Division State the use of its own Lower Basin tributaries [California has none] without diminishing its share in the mainstream apportionment. "Tributaries" are defined as all stream systems which naturally drain into the mainstream below Lee Ferry [Art. I(F)] and the United States is enjoined from reducing "the apportionment or delivery of mainstream water to users within the States of Arizona and Nevada by reason of any uses in such states from the tributaries flowing therein;" [Art. II(C)].

c) Upper Basin Allocations and Development

Unlike the Lower Division States, which had to rely on the Supreme Court to finally apportion the Lower Basin share of Colorado River Compact waters, the five states with claims to the Upper Basin share were able to agree on a division among them. The 1948 Upper Colorado River Basin Compact was signed by Arizona, Colorado, New Mexico, Utah, and Wyoming.

Unlike the Lower Basin apportionment, the Upper Basin Compact charges each state for use of its tributaries. It defines the "Colorado River System" as that portion of the Colorado River and its tributaries within the United States [Art. II(a)], the "Upper Colorado River System" as that portion of the System above Lee Ferry [Art. II(i)], and then apportions the Upper Basin's 1922 Compact share in the Upper System by awarding Arizona up to 50,000 acre-feet of consumptive use per annum and dividing what is left between the other four signatory states on a percentage basis [Art. III(a)(1,2)]. These apportionments are based on the requirement that "Beneficial use is the basis, the measure and the limit of the right to use;" [Art. III(b)(2)]. The Upper Basin Compact establishes a multi-state Upper Colorado River Commission to administer these apportionments as well as its other provisions [Art. VIII].

Article IX(a) of the Upper Basin Compact provides, in part:

> "No State shall deny the right of the United States of America and . . . no State shall deny the right of another signatory State, any person, or entity of any signatory State to acquire rights to the use of water . . . in one State . . . for the purpose of diverting, conveying, storing or regulating water in an upper signatory State for consumptive use in a lower signatory State, when such use is within the apportionment to such lower State made by this Compact. . . ."

The Upper Basin Compact contains specific provisions similar to Articles I(K) or II(B)(4) of the 1964 Decree in Arizona v. California requiring the apportionment of the State in which water is consumptively used to be charged for any such water taken from the Colorado River System. First, it applies to water use by the United States:

> "The consumptive use of water by the United States of America or any of its agencies, instrumentalities or wards shall be charged as a use by the State in which the use is made. . . ." [Art. VII].

Second, it applies to use of water from five different Colorado System rivers which flow in more than one State -- the La Plata, Little Snake, Henry's Fork, Yampa, and San Juan:

> "All consumptive use of water of [the river] and its tributaries shall be charged under the apportionment of Article III hereof to the state in which the use is made. . . ." [Arts. X, XI, XII, XIII, and XIV].

The Upper Basin Compact contains language concerning rights of the United States:

> "Nothing in this Compact shall be construed as:
>
> ". . . .
>
> "(C) Affecting any rights or power of the United States of America, its agencies or instrumentalities, in or to the waters of the Upper Colorado River System. . . ." [Art. XIX (b)].

This language does not refer to Indian reservation rights or power. Indian reservations are neither "agencies" nor "instrumentalities" of the United States. When reservations are to be included, the term "wards" is used, as in Article VII, *infra*, where the language ". . . its agencies, instrumentalities, *or wards*" (emphasis added) is used. Therefore, Indian reservations rights can be affected by this Compact.

Once the 1948 Upper Basin Compact apportioned the Upper Basin's 1922 Colorado River Compact share, major development could proceed. The result was the 1956 *Colorado River Storage Project Act* which authorized four major dam/reservoir storage projects in the Upper Basin -- Flaming Gorge on the Green River, Curecanti on the Gunnison, Navajo on the San Juan, and Glen Canyon on the mainstream Colorado above Lee Ferry.

d) The Colorado River Basin Project Act and the Operating Criteria

Following the *Arizona* v. *California* decision fixing Arizona's share of the Lower Basin apportionment, Congress passed the *Colorado River Basin Project Act* in 1968. It authorized construction of the Central Arizona Project along with several Upper Basin projects. It also limited the apparent discretion given the Secretary of the Interior by the 1964 Decree [Art. II(B)(3)] to apportion water among Lower Basin users in times of shortage, that is when less than 7,500,000 acre-feet of mainstream water is available for consumptive use in the Lower Basin. The 1968 Project Act provides that in time of such shortage, the satisfaction of California's full Lower Basin apportionment (4,400,000 acre-feet of consumptive use), plus early priority uses in Arizona and Nevada, shall take priority over any mainstream releases to the Central Arizona Project [Sec. 301(b)].

The 1968 Project Act also provides:

> "Rights of the upper basin to the consumptive use of water available to that basin from the Colorado River system under the Colorado River Compact shall not be reduced or prejudiced by any use of such water in the lower basin." [Sec. 603(a)].

This section appears related to Articles I(K) and II(B)(4) of the 1964 Decree in *Arizona* v. *California* and to the provisions in the 1948 Upper Colorado River Basin Compact under which consumptive is charged against the apportionment of the state of use. Under this section 603(a), the Upper Basin rights cannot be "reduced" by any Lower Basin use of Colorado River System water. This would apply to any attempt to transfer an Upper Basin right or diversion for consumptive use in the Lower Basin and would preclude diminishing the Upper Basin's 7,500,000 acre-feet share under the Compact by the amount of such consumptive use, necessarily implying that the Basin (and State) of actual use is the Basin (and State) to be charged.

Finally, the 1968 Project Act also requires the Secretary of the Interior to develop operating criteria for the storage reservoirs authorized by the Boulder Canyon Project Act (Lake Mead) and the Colorado River Storage Project Act (Lake Powell and the Flaming Gorge, Curecanti, and Navajo storage reservoirs) toward meeting the 1944 Mexican Treaty obligation, the Upper Division States' 75 million acre-feet every ten years delivery obligation at Lee Ferry, and other goals [Sec. 602(a)]. This requirement reinforces the prior conclusion that the United States controls and administers all mainstream water below Lee Ferry in accordance with the Law of the River and establishes that such control also extends to the major Upper Basin storage reservoirs.

There is much, much more that could be discussed about the "Law of the River," including reference to the Mexican Treaty of 1944 and the 1974 Colorado River Basin Salinity Control Act, but the previous discussion should provide sufficient basis for analyzing the issues raised by the potential off-reservation transfer of Indian reservation Winters rights.

II. Off-Reservation Transfers of Ute Mountain Ute and Southern Ute Indian Reservation Water Rights For Use Outside of Colorado

a) Transfers For Use in the Lower Basin

The Colorado River Compact of 1922 allocates water between the Upper and Lower Basins and controls interbasin transfers. It reserves to each basin, "respectively, the exclusive beneficial consumptive use of 7,500,000 acre-feet of water per annum" (emphasis added) [Article III(a)], and thus bars the transfer of an Upper Basin right, such as that of one of the Ute Tribes, to any user in the Lower Basin.

The key words in Article III(a) are "exclusive . . . . consumptive use." Even were "use" not qualified, how could it possibly refer to the transfer of a portion of the Upper Basin entitlement to an entity in the Lower Basin whereby that entitlement is consumptively used in the Lower Basin? The Upper Basin is only entitled to water it can use, but how can it be deemed to have used water that is consumptively used elsewhere? The words "exclusive" and "consumptive" only reinforce this conclusion. The Upper Basin's right is to "consumptive use" of the water and this use must be "exclusive." Not only must the water be consumptively used by the Upper Basin, but that use must be exclusive, thus precluding any consumptive use in the Lower Basin.

The water rights of the two Ute Indian Tribes are part of

Colorado's share (under the 1948 Upper Colorado River Basin Compact) of the Upper Basin entitlement (under the 1922 Colorado River Compact). Any attempted interbasin transfer of tribal water rights would thus violate the Colorado River Compact and be prohibited by it. These tribal rights are subject to the Compact by virtue of the Boulder Canyon Project Act, in which Congress explicitly approved the Compact [sec. 13(a)] and provided that the "rights of those claiming under the United States" were subject to the Compact [sec. 13(b)].

Even if interbasin transfers were not prohibited outright by Article III(a) of the 1922 Compact, the only types of transfers that would be desirable and attempted would be illegal pursuant to other provisions of the Law of the River. The central issue is which basin's entitlement would be charged for the water use.[1] The transfer of a water right makes sense only if the entitlement of the transferor (which may or may not be the diverter) is charged, not that of the consumptive user/transferee. And where the transfer is interbasin, it makes sense only if the entitlement of the transferor basin is charged, not that of the transferee basin. The idea is to transfer a right that might otherwise go unused to a user who would not otherwise be able to get water at all, easily, or with such a high priority. But if the user's apportionment is charged, that cannot work. In the present case, if the user/transferee is an entity in the Lower Basin, where the 1922 Compact entitlement is already apportioned between three States and oversubscribed, the user cannot both take water and charge that use against the Lower Basin's entitlement without illegally displacing its higher priority claimants. And if the user/transferee state's apportionment of the Lower Basin entitlement were not oversubscribed but instead still available for appropriation, then there would be no need for a transfer from another Basin and such a transfer would not be attempted. The point is that the only interbasin transfers that would be advantageous, and thus attempted, would be illegal.

This can best be analyzed by looking at the two methods by which any off-reservation transfer of tribal water rights could be effected. Either the reservation earmarks as its entitlement a certain amount of water in the river system so that an entity in another basin, state, or off-reservation in the same state can divert and use that amount of water under a transferred claim of right; or the reservation diverts water itself and physically transfers it to an entity for use in another basin, state, or off-reservation in the same state.

For interbasin transfers, the first method is doubtless the cheaper, more desirable, and perhaps only practical way to proceed. But even assuming such earmarking could occur in the Upper Basin, the Secretary can release such water for use in the Lower Basin _only_ pursuant to valid contract and _only_ in accord with the respective apportionments of Arizona, California, and Nevada under the 1964 Decree [Arts. II(B)(1-3, 5)]. Moreover, these three states and other parties to the lawsuit, including all major Colorado River water users in California, are specifically enjoined from interfering with the Secretary's operations and from diverting or purporting to authorize any diversion of water outside the system of contracts with the Secretary or in excess of the respective apportionments [Arts. III (B,C,D)]. The Secretary has already long since entered contracts with water users in the three states for the full amounts of their respective apportionments. (Seven Party Agreement contracts in California and the 1940's contracts with Arizona and Nevada). Therefore, any proposed Lower Basin user/transferee of an Upper Basin Indian reservation right could enter into a contract, if at all, with a very low priority and therefore a water entitlement only in years of extreme surplus. The user/transferee would be no better off than if it had simply attempted to contract directly with the Secretary without any transfer of right, so the transfer would be of no advantage. Any attempt by the user/transferee to divert water under the Indian reservation early priority without contract would be illegal as would be any action by the Secretary allowing a diversion without contract or awarding a contract with a priority date ahead of those already contracted for years earlier by other users in the respective state.

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[1] The same issue is central to the analysis of interstate transfers, as we shall discuss, infra.

Moreover, Article II (B)(4) of the 1964 Decree and section 603(a) of the 1968 Colorado River Basin Project Act make it clear that the apportionment of the State/Basin where the water is consumptively used will be charged for such use, thus defeating the whole purpose of the transfer, as discussed _supra_. Article II (B)(4) requires the Secretary to charge the apportionment of the State (Arizona, California, or Nevada) in which the mainstream water is consumptively used. Section 603(a) applies this same rule as to use in the Lower Basin rather than a particular state. It provides that Upper Basin consumptive use rights under the Colorado River Compact shall not be reduced by any use of Colorado River system water in the Lower Basin, which necessarily implies that any use in the Lower Basin must be charged to the Lower Basin, not the Upper Basin. These two requirements preclude any advantage in an interbasin transfer of an Upper Basin Indian reservation water right. Such a transfer is desirable only if the transferor State and Basin are charged with the water use.

The second method to make such a transfer is for the Indian reservation itself to divert the water and transport it directly, physically to the user/transferee in the Lower Basin without the water ever entering the mainstream below Lee Ferry and thus coming under control of the Secretary. Such an alternative might avoid some legal obstacles, but would encounter others, not to mention the practical, financial problem of arranging an alternative (to the river system) means to transport the water hundreds of miles to the user/transferee.

Article III(e) of the Colorado River Compact would prohibit such transfer. It does not allow states of the Upper Division to "withhold water" or States of the Lower Division to "require the delivery of water, which cannot reasonably be applied to domestic and agricultural uses." Just as with "use," discussed supra, the common sense meaning of this requirement is that the Upper Division cannot withhold water that cannot be put to reasonable use by the states (or entities thereof) who withhold it. Putting water to reasonable use does not mean diverting it and transporting it hundreds of miles away from it to be used somewhere else. If the initial diversion without consumption constitutes the "use," what about the actual consumption? Surely the water is "used" when it is actually consumed. So does that mean it can be "used" twice as a legal proposition? Such a reading of "reasonable use" simply makes no sense. The common sense reading of Article III(e) prohibits an Upper Division state diversion for interbasin transfer and consumptive use in the Lower Basin.

Even if Article III(e) of the 1922 Compact did not bar this second method of interbasin transfers from Upper Division States, Article I(K) of the 1964 Decree in Arizona v. California defeats the purpose of such transfers. It provides:

> "Consumptive use of water diverted in one state for consumptive use in another state shall be treated as if diverted in the state for whose benefit it is consumed."

This language is directly applicable to the situation at hand. The state (and basin) of consumptive use would be charged for said use, thus rendering the transfer pointless. It is clear that the Decree intends that all Colorado River System waters (excepting Lower Basin tributaries) reaching Lower Basin users be subject to its provisions and that transferring Upper Colorado River System waters around the mainstream cannot avoid the Decree's provisions as long as that water is used by a party to, or in a state that is party to, that Decree.

b) Transfers For Use in Another State in the Upper Basin

Just as Article III(a) of the 1922 Colorado River Compact bars interbasin transfers, so does Article III(b)(2) of the 1948 Upper Colorado River Compact bar interstate transfers within the Upper Basin. Under Article III(b)(2), each state's apportionment under the Upper Basin Compact is based on the requirement that "[b]eneficial use is the basis, the measure, and the limit of the right to use." This does not include the words "exclusive" and "consumptive" as does Article III(a) of the 1922 Compact, but its meaning is clear. It means that vis-a-vis other states with Upper Basin apportionments, a state only has the right to use that portion of its apportionment that it puts to beneficial use. But what does beneficial use mean? Can "use" possibly refer to the transfer of right to an entity in another state whereby the water entitlement is consumptively used in another state, especially when that state has its own apportionment under the Upper Basin Compact? Any suggestion that "beneficial use" can occur at some point other than the actual point of beneficial consumptive use of the water is simply manipulation of words. Of course, the term "beneficial use" can be explicitly defined as, for example, in the California Water Code section 1011 where conservation of water (i.e. nonuse) is classified as a "beneficial use." But when legislatures (or interstate compacts) do not speak, and the Upper Basin Compact does not in the present matter, "use" in "beneficial use" must be given its common sense meaning which is to use, not to divert for someone else's use, and not to transfer a right so that someone else can divert and use. It is thus clear that any of the five states with an apportionment under the Upper Colorado River Basin Compact can exercise that right only to the extent that the particular state beneficially uses that right.

If an Indian reservation in the Upper Basin attempts to divert water for use in another Upper Basin state or transfer its water right for exercise in another state, then that right has not been put to beneficial use by the state in which the reservation is located and cannot come within that state's apportionment under the Upper Basin Compact. As such, the Indian reservation's exercise of control over that water, by either diverting it or transferring a right to use it, would put its state in violation of the Compact vis-a-vis other Upper Basin states. To the extent the Indian reservation right has been established and quantified, as part of its state's allocation scheme, then exercise of that right would be subject to that scheme so as not to violate the Compact, and an interstate transfer would thus be prohibited. Even had the Indian reservation Winters right been judicially established independent of the state scheme, it is arguable that the United States, in approving the Upper Basin Compact [63 Stats. 31] has bound the Indian reservations to its terms, including the beneficial use requirement that would bar interstate transfers and thus not extinguish the Winters right but merely put limits on the extent (if any) of its transferability. This conclusion is buttressed by comparing Articles VII and XIX(b) of the Upper Basin Compact. As noted, supra, Article XIX(b), exempting rights of the United States, its agencies, and instrumentalities from the requirements of the Compact does not apply to Indian reservations because of the absence of the word "wards," which does appear, as in Article VII, when reservations are to be included.

Even if Article III(b)(2) of the Upper Basin Compact were not an outright bar to interstate transfers within the Upper Basin, other provisions of that Compact indicate that the state of the transferor would not be charged for the water and thus render illegal the only type of transfer that would be advantageous. These other provisions do not authorize interstate transfers of any rights, including those of Indian reservations, but do indicate that in instances of multi-state involvement in the exercise of a water right, the state to be charged is the state in which the water is consumptively used.

Article IX(a) necessarily implies that a downstream state in the Upper Basin, or any person or entity in the state, can acquire rights to divert water in an upstream state for consumptive use in said downstream state as long as that use is within the downstream state's apportionment under the Upper Basin Compact. However, this article appears to be limited to the situation in which the diverter/right holder and ultimate user is the same person or entity, but who, for engineering or other technical reasons, needs to make its diversion in an upstream state rather than in the state where the water is to be used. This is not the same as a transfer of rights where the diverter/right holder and ultimate user are two different persons or entities, as would be the case involving one of the Ute Indian Reservations and some user in another state.

Even under the situation contemplated by Article IX(a), the language of that article requiring that the downstream use be within that state's Compact requirement clearly implies that the water use would be charged to the apportionment of the state of consumptive use, not that state in which the transferor held the right and/or diverted the water.

Several other Upper Basin Compact provisions contain the requirements of charging the user state. One applies to use by the United States or its agencies, instrumentalities, or wards, including Indian reservations [Article VII]; but such a provision is necessary to clarify the need to charge any federal use against the state in which it occurs and does not imply an interstate transfer. Five other provisions apply to rivers which flow through more than one state [Articles X-XIV]; and again, these provisions are occasioned by the flow of a river in two states and do not necessarily imply an interstate transfer of water right. Finally, various provisions of Article V dealing with water losses during reservoir storage provide that reservoir losses of water stored for use in particular Upper Basin States shall be assigned to those respective states.

What does seem apparent is that in every instance of multi-state involvement in the exercise of a water right explicitly dealt with by the Upper Basin Compact, the requirement to charge the user state is imposed. Thus, even if interstate transfers of Indian reservation water rights were permitted in theory, the only type of transfer that would be advantageous and thus attempted--where water use is charged to the transferor, not the transferee--would be illegal.

Conclusion

For the reasons stated herein, any interbasin or interstate transfer of the water rights of the two Ute Indian Reservations would be impermissible under The Law of the River.

ATTACHMENT TO THE JOINT STATEMENT OF THE DEPARTMENT OF WATER RESOURCES OF ARIZONA, COLORADO RIVER BOARD OF CALIFORNIA, AND COLORADO RIVER COMMISSION OF NEVADA ON S. 1415 REGARDING FEDERAL RESERVED INDIAN WATER RIGHTS DOCTRINE

DECEMBER 3, 1987

An issue of great concern today is whether Indian water rights, commonly referred to as Winters rights,[1/] may be sold for use off the reservation and apart from the land. No case to our knowledge has so held. Moreover, a leading commentator has noted that there are no general federal statutes that authorize the sale or lease of Indian water rights apart from the land. (Cohen, Federal Indian Law Handbook, 1982.) An examination of the nature of the right, an implied right at the time of the reservation and the basis of the right, an adjunct to the land for the purpose of making the reservation a productive area, dictates that Winters rights should not be sold for use off and apart from the land.[2/] Indeed, to allow the sale of the right for off-reservation use may well defeat the very purpose of the right, to add to the productivity of the reservation.

This issue is of particular significance to the lower Colorado River water users as the river has been apportioned by interstate compact, Supreme Court decrees, federal legislation, and federal contracts. Under that system, commonly referred to as "The Law of the River," what one user does not use is

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1. It is possible that some Indian tribes may have rights which are not derived from Winters v. United States, but based instead upon aboriginal or pueblo rights. (Tarlock, One River, Three Sovereigns: Indian and Interstate Water Rights (1987) Land & Water L. Rev., Vol. XXII, No. 2, p. 647.) The nature, extent and characteristics of such rights have not been litigated.

2. Indeed, 25 U.S.C. § 177 may prohibit such a sale without the approval of the United States. That section provides in part:

> "No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution."

available to the next priority and what is unused in one state may, under certain circumstances, be used in another state. To the extent that reservations with Winters rights in the Colorado River Basin may market their rights, the entire federal scheme of water allocation will be undermined and there will be a gallon-for-gallon reduction of long-standing rights and contractual priorities. Those who have no rights, under the existing federal priority system, will be able to purchase the paramount priority and diminish the amount of water available pursuant to contracts made over 50 years ago with the Secretary of the Interior. As will be demonstrated, this long-standing federal allocation of an interstate stream should not be undermined by the sale of Winters rights. The very nature and intent preclude any implication that Winters rights should be sold for use off the reservation.

Winters rights were derived from the case of Winters v. United States, (1908) 207 U.S. 564 [52 L.Ed. 340], which was an action commenced by the United States to restrain non-Indians from constructing or maintaining dams or reservoirs or in any manner preventing the water of the Milk River, a non-navigable river, from flowing to the Fort Belnap Indian Reservation. The tribe had, by an 1888 agreement with the United States, relinquished its lands in return for a reservation for a permanent home. No water right was mentioned in the agreement, however, without such a right the land would be useless to the tribe. The Court found that it was the policy of the government and the desire of the tribe to change the tribe's habits and to become a pastoral and civilized people. In order to accomplish these objectives and on a smaller tract of land than they had previously occupied, the Court found that there would have to be a change in the physical condition of the land; i.e., water would have to be provided. Moreover, the Court followed the basic rule of interpretation of agreements with Indians, that is, ambiguities are to be resolved in favor of the Indians. The Court went on to examine the circumstances surrounding the creation of the reservation. Of apparent influence were the following: the United States in 1889 had expressly reserved 1,000 miners inches per year for domestic and irrigation uses and in 1898 the tribe itself had diverted another 10,000 miners inches per year to be used for agriculture. More importantly, perhaps, was the Court's view that the Indians had had command of all the land and water, and had now relinquished that claim, to do so without the promise, implied though it may be, of water would have made no sense. Thus, the Court held that the United States impliedly reserves water for the benefit of Indian reservations when water is necessary to fulfill the purposes of the reservation. In other words, intent is inferred if previously unappropriated water is necessary to accomplish the purposes for which the reservation was created.

Three factors must be analyzed before a Winters right may be implied: the reason for the establishment of the reservation, the characteristic of the land of the reservation, and the needs of the Indians on the reservation. In examining these three factors, however, if the right is properly implied, the right arises without regard to the equities that might favor competing water uses. (Colville Confederated Tribes v. Walton (9th Cir. 1985) 752 F.2d 397, 405, cert. den. 106 S.Ct. 1183 "Colville II".)[3] However, Winters rights are an exception to the usual rule that the United States defer to state law in the area of water rights. (See United States v. New Mexico (1978) 438 U.S. 696, 715; 57 L.Ed.2d 1052.)[4]

Thus, the purpose of the reservation, rather than an actual application to beneficial use, determines the quantity of water to which a reservation may be entitled. Arizona v. California, (1963) 373 U.S. 546, is the landmark quantification case. The Special Master determined that five Indian reservations, along the lower Colorado River, should be awarded water based on the number of practicably irrigable acres within the reservation.[5] The Special Master reasoned that the initial purpose of creating the reservations was to enable the tribe to develop a viable agricultural economy and that the intention of the United States was to reserve that amount necessary to satisfy the expanding water needs of each reservation. In speaking of the right, the Special Master wrote, "as pointed out above, the more sensible conclusion is that the United States intended to reserve enough water to irrigate all of the practicably irrigable lands on a reservation and that the water rights thereby created would run to defined lands, as is generally true of water rights".

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[3] There are two possible conceptual underpinnings for the Winters rights, the tribe itself retained the right if it did not expressly relinquish the right, or the United States reserves the right when it created the reservations. In the case of the lower Colorado River reservations, the Special Master in Arizona v. California held that the United States had reserved that right.

[4] Because federal reserved rights are an exception, the Supreme Court has emphasized the importance of the limitation of such rights to that essential to accomplish the purpose for which the land is reserved. (United States v. Adair (9th Cir. 1984) 723 F.2d 1394, cert. den. 104 S.C. 3536; see also infra at pp. 4, 6, & 7.)

[5] In Arizona v. California, the Special Master extended Winters rights to reservations created by Executive Orders.

(Report at 263.) Moreover, the Special Master later again emphasized the connection of the Winters right and the land and wrote, "[t]hey are of fixed magnitude and priority and are appurtenant to defined lands." (Report at 266.)[6] Practicably irrigable acreage is not the only standard which a court may use to award Winters rights, for the Court must look to the purpose of the reservation. Thus in Colville Confederated Tribes v. Walton (9th Cir. 1981) 647 F.2d 42 ("Colville I") and Colville II, the Court found a right to water to maintain replacement fishing grounds, where the natural habitat had been destroyed. It would appear that a non-consumptive use, such as for fishing or hunting, cannot be later turned into a consumptive use, and such rights may not be transferred. (See United States v. Adair 723 F.2d 1394.)[7] Regardless of whether the purpose of a reservation was agricultural or fishing, or some other purpose, the underlying rationale of Winters rights is to make the reservation itself more productive.

In determining the amount of water which is to be available to the Tribes, the Supreme Court has shown a trend toward practical limitations and a willingness to balance the equities of competing water uses with those Tribes under modern-day circumstances. Those cases have emphasized the scarcity of water and the lack of foreseeably that the resource would become scarce.[8] Three cases of significance have been decided regarding quantity. Two of them deal with federal-reserved rights in general and not Winters rights specifically, but the courts have spoken approvingly of those cases in discussing Winters rights.

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[6] The Special Master did not reach the question of whether the Tribes were entitled to change the use of the water on the reservation. (Report at 265.) However, the parties by a later stipulation agreed that the Tribes could use the water for purposes other than irrigation.

[7] Interestingly, the Court in Adair found that even though the Tribe had transferred all their lands, that their hunting and fishing rights and the Winters right necessary to maintain hunting and fishing, survived.

[8] These are obviously factors of importance of the case in the lower Colorado River basin. To the extent that the Tribes have been awarded water and may be awarded additional water in the lower Colorado River basin, that would mean a gallon-for-gallon reduction for certain public entities who serve Colorado River water within the State of California.

In Cappaert v. United States, (1976) 426 U.S. 126 [48 L.Ed.2d 523], the United States asserted a federal-reserved water right for the Devil's Hole National Monument.9/ A pool within Devil's Hole was the home of a rare species of pupfish. By Presidential Proclamation, Devil's Hole had been withdrawn from the public domain. The Cappaerts were pumping groundwater some 2-1/2 miles from Devil's Hole, but the pumping had caused the level of the pool to decline. The reservation of Devil's Hole, of course, preceded the state permitted pumping of the Cappaerts. The Court held; "[t]he implied reservation of water doctrine, however, reserves only that amount of water necessary to fulfill the purpose of the reservation and no more". (Cappaert at 141.) Here, the purpose of the reservation was to preserve the pool for unusual features of scenic, scientific, and educational interest; therefore, the Court held that the amount of water which was reserved was only that amount which was necessary to preserve the pool for scientific interest, including a water level sufficient to serve as a natural habitat for the pupfish. The Cappaerts were required to curtail their pumping so that the reservation received its minimal needs, i.e., that which was adequate to implement the objectives of the reservation. Cappaert was followed by United States v. New Mexico, (1978) 438 U.S. 696 [57 L.Ed. 2d 1052], in which the United States asserted federal-reserved rights for the Gila National forest from the Rio Mimbres River. The United States sought water for among other purposes, the preservation of the forest, aesthetic, recreational, and fish preservation purposes. The Court recognized that in the federal-reserved right claims, which are based upon an implied right, that the courts had carefully examined the asserted right and the specific purposes for which the right is reserved and concluded that without water the purpose of the reservation would be defeated. However, the Court noted that prior cases had repeatedly emphasized that the amount of water which is reserved is that amount necessary to fulfill the purposes of the reservation and no more. The Court in New Mexico reasoned that where water is necessary to fulfill the very purpose of the reservation, that it is reasonable to conclude even in the case of express deference to state law, that the United States intended to reserve necessary water. However, where water is

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9. Some have cited Cappaert for the proposition that Winters rights are also applicable to groundwater. Such a citation is incorrect, since the Court in Cappaert specifically referred to the pool as surface water. To the extent that groundwater pumping affected the surface system, the Court found that the United States could enjoin the groundwater pumping.

valuable for a secondary use, such as the in-stream uses which the United States had sought, then the inference is that the United States will acquire that water right in the same manner as any other public or private appropriator. Thus, the Court looked to the primary purpose of the reservation and determined that the United States intended to reserve the water to preserve the timber only.10/ This case importantly recognized that in instances of implied reserved water rights, that it frequently requires a gallon-for-gallon reduction and that this fact had not escaped Congress, and must, therefore, be weighed in determining what if any water Congress reserved for use in the national forest. It was noted that the federal reserved rights doctrine is built on implication and is an exception to Congress' explicit deference to state water law in other areas. The Court limited the right to the primary purpose of the reservation.11/

New Mexico was followed by the case of Washington v. Fishing Vessel Assn.'s, (1979) 443 U.S. 658 [61 L.Ed. 2d 823]. Washington involved the interpretation of treaty fishing rights. By treaty the tribe was allowed the right to take fish at all its usual and accustomed grounds and stations in common with all citizens of the territory. The issue in the case was focused on whether the treaty gave the tribe only access to or an actual portion of each run of fish.12/ The Court reasoned that when the contract was negotiated that neither party

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10. It could be suggested that courts should interpret intent strictly to include only those uses that were clearly contemplated in the land grant. (Indian Claims to Groundwater: "Reserved Rights or Beneficial Interest", 33 Stanford Law Review 103 (Nov. 1980).)

11. The primary purpose of a reservation is not limited to one purpose only. In U.S. v. Adair, 723 F.2d 1394, the Court held that it was not required to identify a single essential purpose, rather it found that fishing, gathering, and agriculture were all primary purposes.

12. In interpreting treaties, the Court reasoned that such a treaty is essentially a contract between two nations and unless the nations were at war and one is defeated, it is reasonable to assume that the contract was negotiated at arm's length. The Court found that standard applicable in this case. The principle must, however, be coupled with the usual deference accorded to Indians. These principles, taken together, lead to the principle that it is Indians' likely understanding which must prevail.

realized nor intended that their contract would determine whether and how a resource thought inexhaustible at that time would be allocated between the Indians and incoming settlers when it became scarce. Therein the Court held:

> "As in Arizona v. California and its predecessor cases, the central principle here must be that Indian treaty rights to a natural resource that once was thoroughly and exclusively exploited by the Indians secures so much as, but no more than is necessary to provide the Indians with a livelihood that is to say, a moderate living." (Id. at 685).

The Court set the maximum amount of fish which could be taken by the tribe and left open the possibility that the tribe's share could be reduced. For example, if the tribe dwindled to a few members or if the tribe found another source of support, the right could be reduced, since the livelihood of the Tribes under such reduced circumstances could not reasonably require a large allotment of fish. The Court opened the door to allow a reduction but not an increase in the tribe's maximum entitlement. By awarding a maximum, the Court satisfied a certainty and finality standard, but also left room for some flexibility for changing circumstances.

While those cases discussed above were not Winters cases, the Ninth Circuit in United States v. Adair, 723 F.2d. 1394, cited with approval the Cappaert and New Mexico cases and held that two guidelines had been established by those two cases regarding Winters rights; water rights are implied only where water is necessary to fulfill the very purpose of the reservation and not for secondary uses; and the scope of the right is circumscribed by the necessity that calls for its creation in other words, it reserves only that amount necessary to fulfill the purpose of the reservation and no more.

Thus, these cases recognized the exceptional nature of federal-reserved rights and the need to limit such rights in the face of today's realities. Even though it appears to be well-settled law that the tribe can lease and sell, under limited circumstances, land and water together, that limited right to sell does not support the right to sell such right apart from the land. In Skeem v. United States, (1921) 273 Fed. 93, land had been allotted to individual Indian tribal members and subsequently leased to a non-Indian. The Court found that the patents under which the individual tribal member had received his allotment made no express indication as to whether or not the water right would be lost if the land was leased, therefore, the Court implied a right to lease a portion of the water with the land although the Court did not directly deal with the quantity or extent of the lessee's rights. The of retained water rights for although the Tribes are entitled to water rights, they are entitled to only the minimum amount necessary to satisfy the purposes for which the reservation was created. Moreover, Winters is an exception to the rule that the United States defers to state law in the acquisition of water rights and the intent to reserve such rights is implied. Can it really be said that at the time of the creation of the reservations that the United States or the Tribes contemplated that water would be sold for use off the reservation? It is clear that at the time of creation, the parties were seeking to change the way of life of the Tribes by making them pastoral and agricultural entities. To be sure, some of them also retained fishing and hunting rights, but it is most unlikely that the parties would have contemplated that the Tribes would sell water as they sold crops. The intent was to make the reservation, which was a reduced amount of land, productive enough to allow the Tribes no less than the same standard of living as that which they enjoined on their larger reservation. They were not intended to benefit third parties unrelated to the reservation, which would be the case if other non-Indian users were allowed to purchase the tribe's water rights for use off the reservation.

ENVIRONMENTAL POLICY INSTITUTE

Testimony of Dr. Brent Blackwelder, Vice President of the Environmental Policy Institute on HR 2642, the Colorado Ute Indian Water Rights Final Settlement Agreement, Before the House Interior and Insular Affairs Committee, September 16, 1987

Mr. Chairman and Members of the Committee, I am Brent Blackwelder, Vice President of the Environmental Policy Institute, a public interest organization specializing in energy, water, public health, and agricultural resource issues.

I am here today to testify that action on H.R. 2642, the Colorado Ute Indian Water Rights Final Settlement Agreement, is premature until EPI policy implications, unanswered questions, and terms of development that are necessary to make this agreement work are clearly spelled out. The Agreement is based largely upon the pending Animas La Plata Project whose design and cost have undergone major change. The Agreement is also set in the context of Bureau of Reclamation water projects in Southwestern Colorado. This Committee deserves to be told the full story behind the Dolores and Dallas Creek Projects before proceeding with this Agreement or with any aspect of the Animas La Plata Project. Indeed, it is misleading to attempt to consider this Agreement by itself, pretending that there are no significant issues confronting the Dolores and Animas La Plata Projects integrally linked to the Agreement.

Of special concern to EPI is the division of the Animas La Plata Project into two phases. This phased approach raises questions of economic justification, adequacy of fish and wildlife mitigation measures, and, most importantly in the present context, whether the Indians will ever receive any benefits. Animas La Plata is primarily a project to benefit 400 non-Indian farmers with a subsidy of $5800 per acre or roughly $1.2 million for a 200-acre farm. The crucial features for the Ute Mountain Utes are deferred until phase 2 and left up to non-federal interests.

With the construction of the Dallas Creek and Dolores Projects we have witnessed the reckless waste of hundreds of millions of tax dollars. The very irrigators to be benefited by the Dolores Project are suing to stop it. The communities who desperately sought Dallas Creek municipal water and obtained a Congressional waiver from the standard repayment requirements, announced that they don't want the water after all.

EPI is today releasing an in-depth report on the Animas La Plata Project. Drawing information straight from Bureau of Reclamation documents, author Peter Carlson, former Director of EPI's Water Resources Project, points to an extraordinary array of unresolved issues surrounding the Animas La Plata Project.

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EPI believes that thorough Congressional analysis of the project as currently proposed is essential prior to commitment to a $586 million project. The report cites serious unresolved water quality issues of two types: 1) the presence of heavy metals and radioactive material in excess of EPA standards in the project water and 2) the aggravation of salinity problems in the Colorado River with the possibility that the project may cause $686 million in damages in its first 20 years of operation. The report raises the issue of further agricultural subsidies in an area where farmers are entering the USDA set-aside program. The provision of costly water to Durango is placed in the context of a detailed consultants' report to the town outlining cheaper methods of supply.

EPI has met with representative of the Southern Ute and Ute Mountain Ute Tribes several times in an effort to understand the issues and needs involved. We have indicated that we remain committed to work for an arrangement that genuinely meets their needs and that avoid the serious problems besetting the currently designed Animas La Plata Project.

EPI asks the Committee to look to the implications that the pending Agreement has on the originally authorized Animas La Plata Project and that answers be provided to the following set of questions we raise on the pending Agreement.

QUESTIONS

1) With respect to waiver of the Nonintercourse Act, which would allow the Tribes to use their water on or off the reservation, what are the details on off-reservation use, given the absence of information in project documents on off-reservation use. Furthermore, is it clear that the EIS that was undertaken for the Animas La Plata project does not relieve the Tribes from their NEPA requirements on any future development?

2) How long into the future will the project construction costs and project operation, maintenance, and repair costs be deferred?

3) Why is it necessary to waive the provisions of Reclamation Law? The recent abuses in the law give a clear indication of the ends to which western growers will go to receive federally subsidized water. What is to keep them from going after Indian water, thereby avoiding requirements of Reclamation Law? No where in project documents is it indicated that such a need exists for the Tribes to be relieved of these requirements or the reasons for such.

4) What sort of development plan has been outlined for the $49.5 million Tribal Development Funds?

5) If the Navajos are among the project beneficiaries, why are they not part of the Agreement? It is worth noting that in comments on the EIS for the Animas Project, the Navajo nation did not want to have anything to do with the project when it was first conceived.

6) According to the agreement on page 1, lines 40 -43, the Indians are to beneficially use water on, under, adjacent to or otherwise appurtenant to the two reservations within the state of Colorado even though there were plans for use of the water in New Mexico. What is the situation for New Mexico?

7) On page 2, lines 59-60, the authorization to sell, exchange, lease or otherwise dispose of Indian water was not addressed in the Environmental Impact Statement (EIS), the Definite Plan Report (DPR), or otherwise authorized as a project purpose. In reading project documents it seems clear that the intent was to keep the water on the reservation. Is this a brand new proposal?

8) Page 4, lines 134-140. This is a change in the design and authorization of the Dolores Project and there should be separate legislation and time to assess the impact on the rest of the project.

9) Page 6, line 202. It is unclear what the implications of giving the Utes priority on stored Dolores water will have on other Dolores water users. This was not covered in the Dolores EIS, Supplements to the DPR or in similar documents for the Animas La Plata Project. What are the implications?

10) Page 7, line 223. Who will pay for the 800 acre-feet/year for fish and wildlife?

11) Page 7, line 234. Will the Tribe get their municipal and industrial (M&I) water first in a water short year?

12) Page 7, lines 236-239. This section seems to say, if the Ute Mountain Utes change agricultural water to municipal and industrial water and sell or lease the water, the contract should make it clear that the lessees or purchasers will not get every drop of water promised because the shortages will be shared. Will this be the case?

13) Page 8, lines 248 - 253. This section needs some explanation. The acre-feet figures in this section do not match up with the acre-feet figures from the previous page.

14) Page 8, lines 258-265. What happens to the water that is not used under section (d)(i)? Does someone else get to use it and pay the Tribe or is it stored in the reservoirs? Who pays the operation and maintenance costs on this water?

15) Page 9, lines 297-305. Who is entitled to use the water under section (d)(ii) if the Tribe does not consume it?

16) Page 9, lines 307-310. Section (d)(iii) uses the phrase "among the state, the tribe, the Dolores Water Conservancy District and the United States Bureau of Reclamation". Does this not change the (d)(ii) consumptive use figures?

17) Page 10, lines 327-328. This agreement appears to confer water rights to the Ute Mountain Utes on the Mancos River and the Dolores River. Are these legal claims for these rivers unclear to begin with?

18) Page 12. In fairness to the Ute Mountain Utes, EPI hopes that the Committee would make it clear in the report accompanying this legislation that notification to renegotiate shall serve to retain their position and make clear that they will not get stuck with accepting (a),(b), and (c) on lines 371-381.

19) From reading lines 382-410 its sounds as if there is a built in disincentive to seek justice and restitution if the Highline-Towaoc Canal is not built and they possibly lose the right to 23,300 acre-feet of water and possible opportunities to lease or sell water for economic gain. Is this true?

20) Page 15, lines 467-470. This agreement is legislating a project-reserved water right for the Tribe in the Animas La Plata project that according to a study by Black and Veatch for the city of Durango they had no right to. What explanation is being offered to deal with this conflict?

21) Page 15, lines 478-483. The Committee should make it clear that the reserved water right can only be used in Colorado. The language in the Agreement is more restrictive since it seems to say that it can only be used on the reservation or within the boundaries of the Animas La Plata Conservancy District. The Committee may want to inquire about the limitation to this District and not the other four Districts that are part of the Agreement.

22) It is a bit puzzling as to how the Ute Mountain Utes are going to handle 6,000 acre-feet of municipal and industrial water and 26,300 acre-feet of agricultural water since their facilities for using it are in Phase 2 of the project. The Ute Mountain Utes faced with two options: develop a market for the water to be used on the reservation or be faced with a closed market situtation of one potential buyer, the Animas LaPlata Conservancy District which already will be receiving water from the project. Once again, it appears that Indian people are being set up. Where is the economic opportunity for the Tribe?

23) Page 20, lines 615-616. EPI is troubled by the January 1, 2000 completion date. An examination of other Bureau of Reclamation projects raises doubt about the ability to complete any major project on time.

24) Page 20, line 628. Why is the tribe provided with a five year time period here for consultation and only an eight-month period on the Highline-Towaoc Canal?

25) Page 21. Once again, the conditions on page 21 appear to endanger the economic livelihood of the Utes: they lose their reserved water right. Whom does this go to in the event of loss?

26) Page 21. This page appears to say to the Indians: "So what if you litigate and win more water in the interim. How are you going to get the water and use it? We're not going to let you use our facilities because if you do, you will only get the allocation from the Ridges Basin Reservoir by your previous full project reserved water right." Is this an accurate reading of the intent of the non-Indian proponents of the Animas Project?

27) Page 23. Why is November 1, 1988, such a magic date for the Tribe to decide on making a crucial engineering economic decision? They are being asked to decide on the capacity of the Ridges Basin Pumping Plant, Long Hollow Tunnel and Dryside Canal and other associated delivery facilities and their possible reduction. It sounds as if the Utes future is already decided for them and that a plan is actually in place. If so, it would be interesting to see what it is.

28) Page 24, Line 742. EPI is a bit in the dark as to who the other "water users" are on line 742. In addition, why isn't there an increase in OM&R and no reductions in deliveries to the Tribe?

29) Page 27. According to the Agreement, the Southern Utes shall use "on that part of the Reservation in Colorado or Boundaries of the Animas La Plata Water Conservancy District 26,000 acre-feet for M&I and 3,400 for agriculture, and that until the Southern Ute Reservoir is built, it will be stored in Ridges Basin. The Agricultural water will be allocated according to the DPR. Since the water is to be used in Colorado, the Agreement leaves in doubt the issue of whether the Tribe can use the water on lands in New Mexico.

30) Page 29. Why are the Agriculture and M&I Tables different for the Southern Utes and the Ute Mountain Utes when it comes to determinations of historic beneficial use?

31) Page 30. Aren't the Southern Utes are in the same economic bind as the Ute Mountain Utes over the single contractor for water situation?

32) Page 34. Why should there be a deferral on repayment until water is used by the Tribe? Why don't they use the Water Supply Act of 1958 requirements? The project is supposedly being built because there is a need for water.

33) Page 34-35. The same issue arises for the Southern Utes and Ute Mountain Utes on where they will take water and when they have to make a decision.

34) Page 37, Lines 1148-1149. It is unclear what this financial windfall represents.

35) Page 38. What is so special about these parcels?

36) Page 39. Why aren't the improvements that the Florida Ditch Companies having to make for parcels 1 & 2 part of Animas La Plata project costs?

37) Page 42. Did the Tribe have a right on the Piedra River before? Is there a discussion of this in the EIS or DPR? What is the flow of the river?

38) Page 47. Why don't the Ute Mountain Ute's have the well restrictions that the Southern Ute's do?

39) Page 57. This appears to imply that if the Tribes, through their U.S. Trust relationship want to change their project reserved water rights, then the Federal Government will have to budget and appropriate specific funds for such action, otherwise it will not take place. Is this interpretation correct?

40) Page 59. This appears to conflict with the stipulations and restrictions laid out on pages 15 and 27.

41) Pages 59-60. This appears to say "go on ahead and try to sell, exchange, lease or otherwise dispose of your water outside the boundaries of the reservation but you may be faced with litigation." Is this interpretation correct?

42) Given the restrictions on pages 15 and 27 on how the water should be used and given the silence in this section as to who will defend the Indians in such litigation and the place, what intentions does the Committee have?

43) If water is truly needed for economic development, then doesn't it make sense to keep it on the reservation? Dividing this project up into Phase 1 and Phase 2, where Phase 2 happens to be all of the Indian delivery and storage facilities, makes one wonder what the Federal Government is

really doing here in the first place.

Concluding Comments

There are two more points that we would like to raise on this issue of what the two tribes are actually gaining by agreeing to this settlement. The question of paper water rights versus wet water seems to be at the heart of this agreement.

In letter to the Secretary of Interior in 1979, the Tribe stated:

> ...We seek no less from the Animas-La Plata project and desire to have the water to achieve our goal of self sufficiency and self-determination. Paper water rights will not fulfill the needs of the Southern Ute people. Storage of Animas River water will provide us with this critically needed resource in the years to come.

On December, 10, 1986, the Southern Ute Tribe as well as the Ute Mountain Ute Tribe agreed to just that - paper water rights. Because the Animas La Plata project has been divided up into a Phase 1 and a Phase 2, the Indians will receive paper water in the Ridges Basin Reservoir but will not be able to get it to their reservation until non-federal interests decide to build Phase 2 as we have indicated in our previous comments. As part of this development package in exchange for this phasing approach the Tribes are to receive a Tribal Development Fund.

Reference is made in the executive summary of the Settlement that the precedent for Tribal Development Funds was set in the Papago settlement ($15 million) in Arizona for purposes similar to those for the Ute development funds. It is worth noting that in the Papago settlement of 1982 that the development fund was for "the subjugation of land, development of water resources, and the construction, operation, maintenance, and replacement of related facilities on the Papago Reservation. Furthermore, the Tribe may only spend each year the interest and dividends accruing on the sum. Agricultural development or land development were central to the fund. In the case of the two Ute Tribes this is less clear.

Much is made of the trust fund that is set up for the Tribes to enable them to develop and use their water resources. It is interesting to note what that money was contemplated for during the negotiations that took place on the cost-sharing agreement on the project. In September of 1985, the total amount in the fund for just the Ute Mountain Ute's was to be $100 million.

The picture of how the Southern Ute's were to use their share of a trust fund was less clear. At a September 19, 1985 Water Rights negotiations session, Counsel for the Southern Ute Tribe indicated that their request for a $30 million development would would be used for on-farm development, rehabilitation and consolidation of lands on the reservation, and compensation for damages.

These scenarios beg the question "What is the development fund going to be used for?" If the federal facilities are going to provide water for energy development, EPI feels that at a minimum, a supplement to the EIS is in order since such action was not covered in the project's EIS. If the water is to be marketed outside of the area, EPI feels that a supplement to the EIS is also in order. If it is to be used for agricultural development or non-energy related developments on the reservation more information on the nature of the development would be pertinent given the wide ranging justifications that have presented so far.

EPI supports the concept of a Tribal Development Fund; however, we do have a major question about the potential development issues that may result from such a fund were they to result in development outside the reservation or if the development on the reservation was going to have an impact on another national resource.

Because of the phased construction of the Animas La Plata Project as laid out in the agreement, there are additional concerns in terms of whether the project is still economically viable as a Federal project, what the impacts will be on the cultural resources-historic preservation program that was relying on 1% of the project's budget for recovery programs, whether the recreational objectives will still be achieved because of facilities in phase 2, and what the fate of the wildlife mitigation that was also tied to the original project will be.

This concludes our statement.

ENVIRONMENTAL POLICY INSTITUTE

NEWS RELEASE

FOR RELEASE: SEPTEMBER 18, 1987

EPI REPORT CONCLUDES BUREAU OF RECLAMATION'S BIGGEST NEW PROJECT IS ENORMOUS WASTE & ENVIRONMENTAL DEBACLE

"One of the most ill conceived reclamation projects in the nation's history," the the Environmental Policy Institute concludes in its just-completed analysis of the Animas La Plata Project in Southwestern Colorado.

The $586 million project is the Bureau of Reclamation's biggest pending new construction start. "It boggles the mind to see that Members of Congress are actually pushing another project in Southwestern Colorado after two spectacular failures with the Dolores and Dallas Creek projects," said Dr. Brent Blackwelder, the Institute's vice president.

The projects, which Dr. Blackwelder refers to, have been plagued with cost overruns and design problems. Farmers in the Dolores project are now suing to get out, saying that if forced to take the water, they will lose their farms.

"The Animas La Plata has the potential of suffering from all the problems of these two projects, only to an even a greater degree," Blackwelder said.

Among the findings of the EPI report:

* The project's primary objective would increase agricultural production in an area where a large percentage of the landowners have put land into the USDA set-aside program;
* The project would consume as much energy as is used by a city of 63,000 people.
* The project would increase salinity in the Colorado Basin, an issue of serious concern to lower basin states and Mexico. Salinity increases during the first 20 years of project operation could be on the order of 100 mg/l, which translates into $686 million in costs to downstream users. (The Bureau estimates each milligram in costs to per liter increase causes $343,000 in damages.)
* The project would take its water supply just downstream from the site of a uranium mill tailings pile and the Durango sewer plant. The Animas River is already loaded with metals from past mine operations. Up-to-date water quality analyses have not been performed. .
* The project would indebt the city of Durango many times the cost of city-initiated options, such as development of the city's own water rights.

218 D Street, S.E., Washington, D.C. 20003 (202) 544-2600

The most startling finding of EPI's review of the project documents is that even though the Animas-La Plata is being primarily justified as an effort to satisfy the water-supply claims of the Ute Mountain and Southern Ute Tribes, the Bureau's separation of the project into two phases contradicts this claim. Phase two, which contains the key delivery and storage system for the Indians, has been "deferred"--i.e. irrevocably deleted from the federal project. (Phase two has been left to non-federal entities to finance.)

EPI's report was prepared by water specialist, Peter Carlson, who directed the Water Resources Project for the Institute. Carlson lays out all the conflicting claims presented about the project in the various documents produced by the Bureau of Reclamation.

For more information contact Dr. Brent Blackwelder at 544-2600.

STATEMENT OF
DARIES C. LILE
IRRIGATION DIVISION ENGINEER
COLORADO STATE ENGINEER'S OFFICE
before the
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
and
THE WATER AND POWER SUBCOMMITTEE
OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
regarding
S. 1415
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987
WASHINGTON, D.C.
December 3, 1987

Mr. Chairman and members of the Committee; my name is Daries C. Lile. I am the Irrigation Division Engineer for the State of Colorado in Division 7. My responsibilities include the administration of the waters in the San Juan and Dolores River Basins. The Southern Ute and Ute Mountain Ute Indian Reservations are within these basins. I was privileged to coordinate the Committee which quantified the stream flows for the Colorado Ute Indian Water Rights Settlement Agreement which S. 1415 will implement.

I would like to impress upon this Committee the broad reach of the Indian Water Rights Agreement. The Agreement encompasses all of the streams in southwest Colorado, and on each and every stream there has been a negotiated settlement. Many of the streams do not produce water adequate to supply existing users, let alone fulfill tribal claims. In recognition of this problem, the Tribes have cooperated in the development of a settlement that is fair and equitable to their neighbors. In turn, present users have reduced some of their allocations to provide adequate water for the tribes. The Agreement quantifies the waters of both the Southern Ute and Ute Mountain Ute Indian Tribes and removes the cloudy future for present water users.

The Agreement was reached only because all water users in southwest Colorado wanted to solve the problem. Throughout the negotiations process all parties made compromises. The water users not only reduced their present allocations but also provided conveyance structures and contributed funds toward the cost-sharing agreement for the Animas-La Plata Project. For example, the Florida Water Conservancy District reduced its allocation of Florida River water and provided conveyance structures for the Indian water at no increased cost to the tribes or to the federal government. The tribes adjusted their claims, compromised priorities, and agreed to the cooperative administration of the streams with the state of Colorado. Cooperative administration ensures that all parties will receive their correct allocations of water, guarantees proper utilization of this valuable resource and prevents waste.

As a water administrator it is sometimes necessary to curtail junior users to supply senior appropriators. During the summer in southwestern Colorado, the state's water commissioners are required to enforce the prior appropriations system daily on most streams. Inasmuch as the Indians may obtain a senior water right through the Winters Doctrine, the seriousness of their claims is well understood and respected by the water users. It is only by compromise and development of storage projects such as the Dolores Project and the Animas-La Plata Project that the conflict over Indian water rights can be resolved. Lengthy litigation will not increase the supply of water in any of the streams in southwest Colorado. Litigation can result only in paper water rights. Once ratified, the negotiated agreement, by contrast, will allocate "wet" water to serve area lands.

This legislation is an opportunity for Congress to establish a new approach to an old problem. I urge you to consider this Bill favorably in light of the compromises that were reached and efforts that have been made by all water users in our Basin.

Thank you.

STATEMENT OF LEWIS MCCOOL ON BEHALF OF THE ROCKY MOUNTAIN CHAPTER OF THE SIERRA CLUB

Before the Senate Select Committee on Indian Affairs and the Senate Subcommittee on Water and Power

On S. 1415, the Colorado-Ute Indian Water Rights Settlement Bill

The Rocky Mountain Chapter of the Sierra Club, which represents over 8,000 members in the state of Colorado, opposes passage of S. 1415, the Colorado-Ute Indian Water Rights Settlement Bill.

The Sierra Club has been on record as opposing the Animas-La Plata Project for several years. While our main opposition has been due to the unacceptable environmental impacts the project would produce, we are also quite concerned about the negative economics of a half-billion dollar project at this time of severe federal deficits and uncertain economic future.

It should be noted at the outset that the Sierra Club recognizes the valid water rights claims of the Southern Ute and Ute Mountain Ute tribes, claims that can be equitably resolved without construction of the Animas-La Plata Project. Since completion of contract agreements and, ultimately, construction of the project is predicated upon enactment of S. 1415, the Rocky Mountain Chapter of the Sierra Club is opposed to passage of this legislation.

The primary water source for the project is the Animas River, a beautiful, white-water tributary of the San Juan River, with ample flow to support a fine trout fishery and excellent riparian habitat in addition to a major commercial and private boating industry.

According to the Colorado Division of Wildlife, the minimum stream flows that would result from the Animas-La Plata Project would be inadequate to protect fish populations. Reduction or complete loss of fish populations would not only impact recreational fishing but also affect riparian species, including endangered bald eagles, which winter along the river.

The Division of Wildlife is considering the possibility of stream restoration and management efforts that could turn the Animas River into a gold-medal trout fishery, but not with the Animas-La Plata Project in place. Such a restoration program, however desirable, is totally incompatible with the Animas-La Plata Project.

The reduction of stream flow would have a devastating effect on white-water boating. Rafters and kayakers, already faced with a short season, would have up to 40 fewer days to enjoy their sport, according to the Bureau of Reclamation's own study. Currently the Animas is Colorado's third most heavily rafted river, and its users are major contributors to the local economy.

Promoted as another recreational lake in an area with numerous large recreational reservoirs, Ridges Basin Reservoir, the project's main storage facility, would flood thousands of acres of prime wildlife habitat. The reservoir site is part of an area purchased by the Nature Conservancy in 1974 and deeded to the state of Colorado as the Bodo State Wildlife Area. Obviously, flooding this area would severely impact the wildlife.

The Division of Wildlife and the Bureau of Reclamation still disagree over final mitigation plans. As with the minimum stream flows, the Bureau intends to do less than that required to minimize the impacts. Regardless of the eventual mitigation, the elk and deer herds now utilizing the wildlife area would be displaced and possibly lost. Other species, such as mountain lions and bobcats, would also be displaced from their natural range.

Thousands of prehistoric cultural sites have been identified in the project area. Hundreds, possibly thousands, of the sites would be destroyed during project construction or by inundation. No mitigation plan has been finalized. Due to the nature of the sites and the time periods of occupation represented by them, any losses may be unacceptable.

Certainly construction on the scale proposed by the Animas-La Plata Project would result in major changes in the current human environment. Impacts from the typical boom-bust cycle that accompany such projects are well known: increased crime, more demand for social services, pressure on schools, other institutions and local government. These changes, when introduced to a community like Durango, with a stable population and a tourism economy, can alter the very nature of the community for many years, perhaps even change it forever.

On the state and national scale the losses are more easily measured in dollars. The U.S. treasury would subsidize the project with $311 million out of the $380 million for Phase 1. In addition, subsidized electricity, enough for a community of 50,000, would be provided to run the massive pumps required to lift water out of the Animas River into the reservoir.

It is doubtful that significant increases in crop production would result from project irrigation, and, if they did, it is doubtful they would be sufficient to cover the costs of the water, delivery and sprinkler systems that the farmers would be required to buy.

Farmers are suing to be released from water contracts in the nearby Dolores Project because cost overruns and other project expenses have increased the cost of irrigation water beyond what is economically feasible for the family farmer. In La Plata County thousands of acres of farmland have been taken out of production, subsidized by the federal set-aside program. Why should the federal government spend hundreds of millions of dollars to increase production on marginal land with a very short growing season while paying large sums of money to take nearby lands out of production?

There is no immediate need for additional municipal and industrial water in the project area. Should such a need arise, other sources are available that could be developed at less cost than as a component of the Animas-La Plata Project.

The often publicized threat of Colorado losing its water to Arizona and California is unfounded. We are guaranteed our water, when needed, by the Colorado River Compact of 1922, a compact ratified by Congress, still fully in force. We don't need this project to protect our water.

Should the project be built, the expensive, excess water conceivably could be used to support destructive coal stripmining operations and coal-fired power plants in the Four Corners, a region already ravaged by similar operations to provide power to Phoenix, Los Angeles and other cities. Air pollution, obscuring our scenic vistas, and acid rain, damaging our alpine lakes, are already serious concerns in the rural Southwest. Additional abuses of this fragile environment cannot be permitted.

Clearly the costs, economic and environmental, of this proposal are too high. The need isn't there. We urge the Senate to reject S. 1415 and to work with the Ute tribes to find an acceptable alternative to provide them their rightful water supply.

As conservation chair of the Rocky Mountain Chapter, I would like to thank the Chairman for allowing me to submit this statement for the record.

Lewis McCool

STATEMENT OF
JOHN E. MURPHY, PRESIDENT
ANIMAS-LA PLATA WATER CONSERVANCY DISTRICT
BEFORE THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS AND THE WATER AND POWER SUBCOMMITTEE OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
regarding
S. 1415
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987
WASHINGTON, D.C.
December 3, 1987

I am John Murphy, a life-long resident of southwestern Colorado, former Mayor of the City of Durango, Colorado, and the President of the Animas-La Plata Water Conservancy District. The value of water in the west has never been disputed nor can it be disputed by any person knowledgeable about the history of the west. Our successes and failures are best described in those chapters of history which are written about water resource development.

This Committee and this Congress have an opportunity with the passage of this legislation to complete one of the most important and vital chapters in the history of the state of Colorado and the San Juan Basin of Colorado and New Mexico. Through the extraordinary efforts of our Governor, our Attorney General, our Indian tribes, our water conservancy districts, our cities and our towns, we were able in a relatively short time in the year 1986 to accomplish a monumental task. An Agreement in Principle was signed on March 16, 1986, between the Colorado Ute Indian Tribes and the State of Colorado. That Agreement in Principle provided the foundation and the framework for continued negotiations with the federal government to arrive at a "suitable cost sharing arrangements with the non-federal entities" as mandated by this Congress in the appropriations bill affecting the Animas-La Plata Project in 1985. That cost sharing agreement was signed by the federal and non-federal parties on June 30, 1986. That was an historic agreement in the annals of Colorado water history because it marked for the first time a fair and equitable agreement whereby the state, local and Indian interests joined with their federal counterparts in the Department of the Interior to provide a major portion of the funding for a water resource development project. President Reagan requested cost sharing, as did President Carter before him, and this Congress mandated that we comply. The cost sharing agreement of June 30, 1986, demonstrates our concerted commitment to the Animas-La Plata Project.

The third historic document which was negotiated during the water mark year of 1986 was the Colorado Ute Indian Water Rights Settlement Agreement of December 10, 1986. This Agreement is a monument to the dedicated individuals in our state, Indian tribal leaders, government leaders, private citizens, farmers, ranchers, bureaucrats, state and federal, who all recognize the value of cooperation and negotiation instead of litigation. To single out one person or group as the most important ingredient would be impossible. You cannot complete a jigsaw puzzle without all the pieces. We in Colorado are fortunate that we had all of the pieces to the puzzle. We are also fortunate that we had the necessary people totally committed to putting those pieces together, which enabled us to arrive at an agreement which is fair to the Indian and fair to the non-Indians. Passage of this legislation will complete terms of the agreement. We believe that the Indian tribes in southwestern Colorado are entitled to their water as we have demonstrated by our agreement with the tribes. We believe farmers, ranchers, cities and towns are entitled to their water as set forth in the compacts of the Colorado River and in the various legislation enactments of Congress over the past 50 years.

The history of the west, indeed, the history of the world, has been written with the wise utilization of our water resources. The history of the Animas-La Plata Project will note that it was accomplished only through cooperative efforts of reasonable minds seeking reasonable solutions to seemingly insolvable problems. This Committee and this Congress can by passage of this legislation prevent wrongs of yesterday from becoming the folly of tomorrow.

STATEMENT OF THE SOUTHERN UTE INDIAN TRIBE

The two Ute tribes do not ask Congress to resolve the hotly debated question whether they are legally titled to lease their water outside of the state of Colorado under the federal and state laws that relate to the Colorado River. The intent of the Tribe is to have the legislation remain "neutral" on this issue. Thus, the question of whether existing state and federal laws, interstate compacts, or international treaties control, condition, prohibit, or permit the lease of the Tribe's water for use outside state is to remain unaffected by the Agreement or the legislation. The only objective of the legislation is to eliminate the Non-Intercourse Act, 25 U.S.C. § 177, as a potential obstacle to such leasing.

Nevertheless, representatives of the States of California, Nevada and Arizona suggested at the hearing on similar legislation pending in the House of Representatives that no legal basis exists for the Tribes' to market their water in the Colorado River in the absence of express congressional authorization. Moreover, despite the fact that the lower basin states were parties to the 1922 Colorado River Compact which, under the tribal perspective, permits Indian tribes alone to market their Colorado River waters between the upper and lower basins, the lower basin states now want Congress to include in this legislation an express prohibition on any tribal leasing out of state, even though such a prohibition may constitute a rewriting of that Compact.

In requesting this new prohibition, the lower basin states argue that two barriers already exist to such leasing. First, they contend that under the reserved rights doctrine, tribal water rights may not be transferred from the reservation of origin. Second, they argue that on the Colorado River, the "law of the river" precludes tribal marketing of water in the lower basin.

The two Colorado Ute Tribes remain committed to the approach that this legislation should not resolve these questions but rather leave to a judicial forum the question of determining the effect of federal common law, prior legislation, and compacts on the Tribes ability to lease their water. As indicated below, there exist strong arguments that neither the federal reserved rights doctrine nor the law of the river operates to bar tribal marketing. Hence, the proposed ban on leasing would rewrite long standing federal law and deprive the Tribes of Fifth Amendment protected property rights.

Tribal water rights vest at least as early as the creation of the reservation. See Arizona v. California, 373 U.S. 546, 600 (1963). Thus, the rights of the two Ute tribes vested and were in full force long before the execution of the 1922 Colorado River Compact and the 1948 Upper Colorado River Compact. A second important characteristic of tribal reserved rights is that like riparian and appropriative rights, such rights have considerable flexibility and may be transferred from the reservation of origin, provided the transfer causes no injury to other users and there is no other federal barrier, such as an interstate compact, to such a transfer. Arizona v. California, at least implicitly, established the framework for the marketing of reserved rights. As stated by one noted commentator, referring to the Report of the Special Master in that case:

> The master also sought, so far as he might, to facilitate the best economic use of Indian water. He noted that his quantification of the Indian water on the basis of irrigable acreage was not intended to limit the use off water to agriculture. While he did not decide the question of change of use, as it was not before him, he at least struck off one shackle that might impede economic maximization. he also suggested that nothing in his proposed decree forbade the transfer of the land and water together or of the water right alone. By thus inviting attention to two essential characteristics of a marketable property right - freedom of transfer and freedom of use - and by establishing a third in the recommended decree - quantification- the master opened the door to the

> creation of a market in Indian water rights, if the Indians and Congress so desire.

Meyers, The Colorado River, 19 Stan. L. Rev. 1, 71 (1966). See also, F. Cohen, Handbook of Federal Indian Law 593 (1982 Ed.). Various cases involving the leasing of tribal land or addressing the question of water rights held by a non-Indian purchaser of a former allotment demonstrate plainly that the reserved rights doctrine encompasses a characteristic which permits transfer of the water rights. See, e.g., 25 U.S.C. § 415; Skeem v. United States, 272 F.93 (9th Cir. 1921); Colville Confederated Tribes v. Walton, 647 F.2d 42 (9th Cir. 1981), cert. denied, 106 S.Ct. 1183. And, of course, Sphorhase v. Nebraska, 458 U.S. 941 (1982), stands for the proposition that the commerce clause of the United States Constitution protects the ability of water right holders to transfer that right across state line as an article in commerce.

The second issue which arises is the extent to which the so-called "law of the river" may preclude the two Tribes' from leasing water out of Colorado. The three lower basin states have argued that the law of the river prohibits such leasing. As noted by the lower basin states, the "foundation document" is the 1922 Colorado River Compact. Article VII of the Compact states that "nothing in this Compact shall be construed as affecting the obligation of the United States of America to Indian tribes." Similar language is included in Article IX of the 1948 Upper Colorado River Compact dividing the waters of the upper basin. Although never discussed by the lower basin states in their analysis of the law of the river, these provisions demonstrate that in 1922 and 1948 the United States and the states involved in negotiating the Compacts did not attempt to eliminate the ability of the tribes along the Colorado River to fully utilize their waters. Thus, whatever the impact of the Compacts on other water users, the tribes' are not restrained by their terms. Indeed, a review of the minutes of the Compacts reveals plainly that the federal and state negotiators recognized the uncertain nature and extent of the tribal rights and sought to avoid any restriction of the unrepresented tribal interests. The lower basin states now ask Congress to ignore the resulting provisions and impose on the tribes a limitation on tribal rights which was wisely avoided in 1922 and 1948.

The two Colorado Ute Indian Tribes recognize that this issue is a difficult one and not easily resolved. Accordingly, while disagreeing with the views expressed by the lower basin states, the Tribes do not ask Congress to construe and determine longstanding federal property rights issues. Instead, the Tribes are content, unlike the lower basin states, to leave this issue for judicial resolution.

SOUTHERN UTE INDIAN TRIBAL COUNCIL

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December 16, 1987

Senator Daniel Inouye
Senate Select Committee on Indian Affairs
838 Hart Building
Washington, D.C. 20510

RE: S. 1415,
"To facilitate and implement the settlement of the Colorado Ute Indian reserved water rights claims in southwest Colorado and for other purposes."

Dear Senator Inouye:

This letter expresses the views of the Southern Ute Indian Tribal Council in response to the contentions of various parties who testified at the hearing on this legislation on December 3, 1987. We ask that it be made a part of the record of the hearing. As you are aware, the Southern Ute Indian Tribe supports the passage of this bill with the amendments recommended by the Administration.

During the hearing, parties opposed to the settlement legislation stated that the staging of the proposed Animas-La Plata Project contemplated under the Cost-Sharing Agreement of June 30, 1986 would result in a situation in which the Tribes do not receive water from facilities constructed as a part of the first phase of the Project. Such statements demonstrate a serious misunderstanding of the Animas-La Plata Project's operation under the Cost-Sharing Agreement.

The Southern Ute Indian Tribe initially proposed that the Project should be built in two phases, with the construction of Southern Ute Reservoir occurring in the second phase. Under the Tribe's proposal, which was incorporated in the Cost-Sharing Agreement, the Tribe will receive its right to water for municipal and industrial purposes from Ridges Basin Reservoir which will be constructed in the first phase of the Animas-La Plata Project. Under the initial project plan the Tribe would not have received its water for such purposes until Southern Ute Reservoir was constructed, with the result that the Tribe's water supply would not be available until long after Ridges Basin was completed and the Dry Side Canal constructed. Now, however, the Tribe's water supply will be available upon the completion of the first major facility to be constructed. Also, water from Southern Ute Reservoir would be considerably more expensive than water from Ridges Basin. Accordingly, under the phased construction of the Animas-La Plata Project, the Tribe will receive its municipal and industrial water supply at a much lower cost than if it had insisted on the construction of the Southern Ute Reservoir. The Bureau of Reclamation has estimated the Tribe's savings in construction costs at $27,979,000. It is also important to note that the Tribe will receive irrigation water under the first phase of the Project. The delivery of only 700 acre feet of Southern Ute water was deferred to the second phase. In short, the proposal to phase the construction of the Project substantially benefits the Tribe.

Second, the Tribal Council was very upset by the allegations of various representatives of the environmental community that the Tribe had refused to consult with those parties about the proposal to settle the Tribe's reserved water rights claims. Although the Tribe has no obligation to consult with those parties, we wish to emphasize that we met with representatives of the Environmental Policy Institute and the National Wildlife Federation long before reaching final agreement with the State of Colorado and the Administration. Those conversations did not progress because the environmental groups insisted that the settlement could not include the provision of any irrigation water or facilities to our non-Indian neighbors. Such an ultimatum is unacceptable to the Tribe. The Tribe has had a long-standing commitment to our non-Indian neighbors to pursue a course of action which will result in the development of Indian and non-Indian lands. Given the checkerboard nature of the tribal lands in the La Plata Valley, it is ridiculous to assume that a reasonable project could be designed to serve only Indian lands. We were simply unwilling to abandon our non-Indian neighbors with whom we have been working since 1968 in order to obtain the support of EPI and the National Wildlife Federation. We are convinced that we made the right choice in light of the current recommendations of the National Wildlife Federation that the Ute Tribes "cash out" their water rights claims. As you know, the Tribe wants to use its water to develop tribal lands, and trading our tribal water rights for cash is simply not acceptable.

Finally, as stated by Chairman Burch in his testimony, the proposal of the lower basin states that the Tribes agree to a rewriting of the law of the Colorado River to prohibit the possibility of leasing tribal water rights outside the state of Colorado is not acceptable. The Tribe believes strongly that the only reasonable approach is to leave this troublesome issue for future judicial resolution. Congress previously addressed this issue when it approved the Colorado River Compact in 1922, and the courts are the appropriate forum for the resolution of questions over the meaning of Congress's prior statements. Moreover, if as we contend, the basin states did not intend in the 1922 Compact to inhibit tribal leasing, it is inappropriate for Congress to rewrite unilaterally the prior agreement between the states and approved by Congress. On the other hand, if the

Senator Daniel Inouye
Page No. 3
December 16, 1987

lower basin states are correct and the Compact forecloses such activities, no additional legislation is required.

The desirability of leaving this question for future judicial action is enhanced by the fact that, in all likelihood, the leasing issue will not require resolution until after completion of the Animas-La Plata Project, which will not occur for at least twelve years. By that time the question may no longer be controversial, or will have been already resolved in another forum. Stated simply, there is no need to resolve this complicated question today.

We hope this is helpful. Please do not hesitate to contact me if further information is desired.

Sincerely,

THE SOUTHERN UTE INDIAN TRIBAL COUNCIL

By: Leonard C. Burch, Chairman

cc: Senator William Armstrong
Senator Tim Wirth
Senator Pete V. Domenici
Senator Jeff Bingaman
Congressman Ben Nighthorse Campbell
Senator Bill Richardson
Scott B. McElroy, Esq.

File

RESOLUTION NO. 86-123

RESOLUTION
OF THE
COUNCIL OF THE SOUTHERN UTE INDIAN TRIBE

WHEREAS, authority is vested in the Southern Ute Indian Tribal Council by the Constitution adopted by the Southern Ute Indian Tribe and approved November 4, 1936, and amended October 1, 1975, to act for the Southern Ute Indian Tribe, and

WHEREAS, there has been negotiated an agreement called the Colorado Ute Indian Water Rights Final Settlement Agreement, and

WHEREAS, in the judgment of the Southern Ute Indian Tribal Council, said agreement will finally determine water rights to which the Southern Ute Indian Tribe is entitled, and

WHEREAS, said agreement will settle existing disputes and remove causes of future controversy between the Tribes and the state of Colorado, and between the Tribe and the United States, and between Indians and non-Indians residing in southwestern Colorado, concerning the rights to beneficially use water in southwestern Colorado, and

WHEREAS, said agreement will settle all claims by the Tribe, and by the United States on behalf of the Tribe, in pending water adjudication proceedings in the Colorado District Court for Water Division No. 7, and

WHEREAS, it appears to the Council of the Southern Ute Indian Tribe that said final settlement agreement is in the best interests of the Southern Ute Indian people.

NOW, THEREFORE, BE IT RESOLVED that the Tribal Chairman of the Southern Ute Indian Tribe be and is hereby authorized to execute on behalf of the Southern Ute Indian Tribe said final settlement agreement.

This Resolution was duly adopted on the 15th day of October, 1986.

Chris A. Baker

Chris A. Baker, Chairman
Southern Ute Indian Tribal Council

NOW, THEREFORE, BE IT RESOLVED by the Tribal Council that the Tribe continue to support construction of the Animas-La Plata Water Reclamation Project as presently envisioned,

BE IT FURTHER RESOLVED, that efforts of the United States Government to frustrate the cooperative efforts of the two Ute Tribes, the State of Colorado, and the State of New Mexico to resolve amicably the reserved water rights issues be actively opposed,

BE IT FURTHER RESOLVED, that attempts by the United States Government to pit the Tribes against the non-Indian neighbors be condemned as shortsighted and unproductive,

BE IT FINALLY RESOLVED, that every effort be made to obtain construction of the Animas-La Plata Water Reclamation Project because of its overriding and diverse benefits to the Four Corners Region.

This Resolution was duly adopted on the 29th day of April, 1986.

Clement J. Frost

Clement J. Frost, Acting Chairman
Southern Ute Indian Tribal Council

CERTIFICATION

This is to certify that there were five (5) of the regularly elected Southern Ute Indian Tribal Council members present at the above meeting at which 4 voted for and 0 against, it being a quorum and the above Resolution was passed, the Chairman not being permitted to vote in this instance due to a Constitutional provision.

Edna Frost

Edna Frost, Secretary
Southern Ute Indian Tribal Council

CERTIFICATION

This is to certify that there were 7 of the regularly elected Southern Ute Indian Tribal Council members present at the above meeting at which 6 voted for and 0 against, it being a quorum, and the above Resolution was passed, the Chairman not being permitted to vote in this instance due to a Constitutional provision.

Edna Frost

Edna Frost, Secretary
Southern Ute Indian Tribal Council

RESOLUTION NO. 86-141

RESOLUTION
OF THE
COUNCIL OF THE SOUTHERN UTE INDIAN TRIBE

WHEREAS, authority is vested in the Southern Ute Indian Tribal Council by the Constitution adopted by the Southern Ute Indian Tribe and approved November 4, 1936, and amended October 1, 1975, to act for the Southern Ute Indian Tribe, and

WHEREAS, pursuant to Article VII of said Tribal Constitution the Tribal Council is empowered to manage natural resources owned by the Tribe, and to develop natural resources in conformity with the best interest of the Tribe, and

WHEREAS, for approximately fifteen years, the Southern Ute Indian Tribe has been involved in litigation, both in Federal and State Courts, to quantify and adjudicate Tribal entitlement to water impliedly reserved for Tribal use at the time of creation of the Southern Ute Indian Reservation, and

WHEREAS, the parties affected by said litigation, including the United States Government, the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, the State of Colorado, and various local water districts have worked diligently to resolve contested issues through negotiation and settlement, and

WHEREAS, the aforementioned parties have reached a settlement which quantifies Indian reserved water rights claims for the Southern Ute Indian Tribe and allows the Tribe to receive certain benefits from the Animas-LaPlata Water Reclamation Project, and

WHEREAS, The Southern Ute Indian Tribe has actively participated in said negotiations with the advice of legal counsel, and

WHEREAS, said settlement is embodied in the Colorado Ute Indian Water Rights Final Settlement Agreement to be executed on December 10, 1986, and

WHEREAS, pursuant to Tribal Resolution Number 86-123, adopted by the Tribal Council on October 15, 1986, the Tribal Council authorized execution of the Colorado Ute Indian Water Rights Final Settlement Agreement.

NOW, THEREFORE BE IT RESOLVED, by the Tribal Council that the Southern Ute Indian Tribe accepts the Colorado Ute Indian Water Rights Final Settlement Agreement.

BE IT FURTHER RESOLVED, that Tribal Resolution Number 86-123 is ratified and readopted.

BE IT FURTHER RESOLVED, that the Chairman of the Tribal Council be delegated the authority to execute said agreement, as well as, any other documents needed to carry out the intent of the resolution; provided, however, that nothing herein shall preclude the members of the Tribal Council from also executing said agreement.

BE IT FINALLY RESOLVED, that the Secretary of Interior be requested to execute and approve said agreement and that the Secretary be further requested to assist the Tribe in securing performance of the terms of said agreement.

This Resolution was duly adopted on the 9th day of December, 1986.

Chris A. Baker

Chris A. Baker, Chairman
Southern Ute Indian Tribal Council

CERTIFICATION

This is to certify that there were (7) of the regularly elected Southern Ute Indian Tribal Council members present at the above meeting at which (6) voted for and (0) against, it being a quorum and the above Resolution was passed, the Chairman not being permitted to vote in this instance due to a Constitutional provision.

Edna Frost

Edna Frost, Secretary
Southern Ute Indian Tribal Council

BEST COPY AVAILABLE

STATEMENT OF
R. T. TOLIVER
MAYOR, CITY OF BLOOMFIELD, NEW MEXICO
CHAIRMAN, SAN JUAN COUNTY, NEW MEXICO, WATER COMMISSION
before the
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
and
THE WATER AND POWER SUBCOMMITTEE
OF THE COMMITTEE ON ENERGY AND NATURAL RESOURCES
regarding
S. 1415
THE COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT ACT OF 1987
WASHINGTON, D.C.
December 3, 1987

I am R. T. Toliver, Mayor of the City of Bloomfield, New Mexico, and Chairman of the San Juan Water Commission of Northwestern New Mexico.

It was a milestone in New Mexico water history last year when officials representing the cities of Aztec, Bloomfield and Farmington, San Juan County, New Mexico, and the San Juan Rural Water Users Association agreed to form the Commission. The Commission is to be responsible for the repayment and allocation of the State of New Mexico's share of the waters of the Animas-La Plata Project. New Mexico is entitled to 30,000 acre-feet of water to be used for the benefit of the citizens, municipalities, water user associations and industries in San Juan County. This supply of water out of the Animas River is critical to the future growth and development of my city and our area of northwestern New Mexico.

We in New Mexico have long supported the Animas-La Plata Project, not only for the benefits which it will bring to our communities but also for the benefits that will accrue to our neighbors in Colorado. Our friends in

Colorado have given us the opportunity to participate not only in the negotiations for the Cost Sharing Agreement which was mandated by the Congress and successfully concluded on June 30, 1986, but also in the historic Indian Water Rights Settlement Agreement which is the subject of legislation under consideration today. These agreements were made in good faith reliance upon federal promises which include not only the law of the river but treaties over 100 years old between the Ute Indians and United States Government. The alternative to this legislation is litigation which could cost millions of dollars, take decades to resolve and cause enormous disruption of non-Indian water rights both in Colorado and New Mexico. Litigation can and should be avoided by passage of this legislation.

The citizens of New Mexico and Colorado have a vital interest and a vested right to use of the water and the benefits of the Animas-La Plata Project as granted and protected by prior congressional action, by interstate compacts involving the Colorado River and by treaties with the Indian Tribes.

It is our strong belief that the passage of this legislation and the construction of the Animas-La Plata Project will enable our entire region to obtain the economic benefits which can flow from the maximum utilization of our precious water resources. Water is essential to our economy.

We in New Mexico request your support for the passage and implementation of this legislation

JOINT STATEMENT OF THE STATE OF COLORADO, UTE MOUNTAIN UTE INDIAN TRIBE, AND SOUTHERN UTE INDIAN TRIBE

before the

SELECT COMMITTEE ON INDIAN AFFAIRS

and the

WATER AND POWER SUBCOMMITTEE

ENERGY AND NATURAL RESOURCES COMMITTEE

UNITED STATES SENATE

concerning

S. 1415

THE COLORADO UTE INDIAN WATER RIGHTS

SETTLEMENT ACT OF 1987

Washington, D.C.
December 3, 1987

I. INTRODUCTION

This joint statement is submitted by the State of Colorado, Ute Mountain Ute Indian Tribe, and Southern Ute Indian Tribe, all signatories to the Colorado Ute Indian Water Rights Final Settlement Agreement ("Agreement"), dated December 10, 1986, in explanation of S. 1415, the proposed Colorado Ute Indian Water Rights Settlement Act of 1987. This proposed legislation is required to implement select provisions of the Agreement.

II. BACKGROUND

Congress first recognized the rights of the Ute Indians to lands within Colorado in 1868 when Congress established a reservation for the benefit of the various bands of Ute Indian Tribes which inhabited southwestern Colorado. Some of those bands have since left the area. Today, two Ute Indian Tribes remain and reside on what are now two separate reservations. The Ute Mountain Ute Indian Reservation is located in the extreme southwest corner of Colorado and the Southern Ute Indian Reservation is located immediately east and adjacent to the Ute Mountain Ute Reservation.

In 1908 the United States Supreme Court held that when Congress set aside reservation lands for Tribes, it impliedly reserved a quantity of water sufficient to make the reservation a viable homeland. This holding is known as the "Winters Doctrine." As a result of the Winters Doctrine, the reservation of land for the Ute Tribes also reserved a quantity of water sufficient to meet the present and future needs of the Tribes.

In 1930 the United States took the first step to quantify the Tribes' water rights by filing suit in federal district court for water from the Pine River for the Southern Ute Indian Tribe. Until 1972, however, no other action was taken to quantify the water rights reserved to the Tribes under the Winters Doctrine.

In 1972 the United States filed claims for both Tribes on numerous rivers in southwestern Colorado in federal district court. Several defendants and intervenors in the federal proceeding moved to dismiss the federal court action and the federal district court granted their motion. The United States appealed this decision. In 1976, the U.S. Supreme Court held that the policy of the McCarran Amendment (43 U.S.C. sec. 666) would be furthered if the Colorado district court, rather than the federal district court, adjudicated the tribal claims to water. Colorado River Water Conservation District v. United States, 424 U.S. 800 (1976). Pursuant to this ruling, the United States, as trustee for the two Tribes, filed water rights applications in 1976 in the Colorado District Court for Water Division No. 7, again asserting Winters rights claims on nearly every river and stream in southwest Colorado.

Not surprisingly, by 1976 many of these streams were fully appropriated and the water was being used by non-Indians on hundreds of farms and ranches, as well as by the non-Indian communities of Durango, Cortez, and Mancos. All of the communities in southwest Colorado, as well as some of the communities in northwest New Mexico, developed their economies relying on this water.

In order to avoid expensive and divisive litigation and the dislocation of existing non-Indian water users which could result from this litigation, the United States, the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, and a host of local Colorado water users worked for two years to negotiate an overall settlement of the litigation and to provide both the Indian and the non-Indian communities with the water supplies necessary for their present needs and future growth.

The negotiations culminated in the execution, on December 10, 1986, of the Colorado Ute Indian Water Rights Final Settlement Agreement ("Agreement"). The United States, the State of Colorado, the Tribes, and ten water user entities in southwestern Colorado are signatories to the Agreement.

Prior to the Agreement, the United States, the State of Colorado, the Tribes, and local water users had executed an "Agreement in Principle Concerning the Colorado Ute Indian Water Rights Settlement and Binding Agreement for Animas-La Plata Project Cost Sharing" on June 30, 1986. The first part of this document, the "Agreement in Principle Concerning the Colorado Ute Indian Water Rights Settlement," set forth the principles upon which a final settlement was to be negotiated. This part of the June 30, 1986, document has been superseded by the Agreement signed on December 10, 1986. The second part of the document, the "Binding Agreement for Animas-La Plata Project Cost Sharing," remains in effect and establishes the nonfederal cost sharing commitments and financing arrangements for the construction of the Animas-La Plata Project. The Secretary of the Interior found the nonfederal cost share commitments to be in full satisfaction of the requirements of chapter IV of Public Law 99-88, "Department of the Interior, Bureau of Reclamation, Construction Program" (99 Stat. 293, at pp. 319-320).

III. FINAL SETTLEMENT AGREEMENT

The Agreement provides a comprehensive settlement of the Tribes' claims for water and secures for the Tribes the means to develop their reservations. It has six major components:

> (1) The Tribes will receive rights to specified amounts of water from the Animas-La Plata and Dolores Projects and additional rights to certain quantities of water from various streams which pass through their reservations.
>
> (2) The manner in which these water rights will be used and administered is prescribed.

> (3) In exchange for these water rights, the Tribes will waive all of their historic water rights claims and any claims which they may have against the United States for breach of trust in the United States' capacity as the Tribes' trustee.
>
> (4) $60.5 million will be placed in development funds for the Tribes to enable them to develop their water resources and to otherwise make their reservations economically self-sufficient.
>
> (5) Nonfederal parties will contribute money toward the financing of the settlement in two regards:
>
> (a) For the Animas-La Plata Project, and
>
> (b) For the tribal development funds.
>
> (6) Repayment of certain of the costs of the Dolores and Animas-La Plata Projects which are allocable to the Tribes will be deferred, and the Tribes' share of operation and maintenance costs will be borne by the United States, until the Tribes put their water to use.

A summary of the Agreement is attached to Governor Romer's written statement. A copy of the executed Agreement has been submitted separately for the hearing record.

The Agreement is premised on the development of new water to be supplied by two United States Bureau of Reclamation water projects. These projects were authorized by Congress in 1968 and were intended to provide Colorado and New Mexico with the opportunity to use a portion of their Colorado River Compact entitlements. One project, the Dolores Project, is nearing completion.

The second, the Animas-La Plata Project, received its first construction appropriation in FY 1986. The completion of these storage projects is critical to the Agreement.

Under the terms of the December 10, 1986, Agreement, the Tribes' water rights will be quantified by the Colorado district court. The Agreement secures to the Tribes "project reserved water rights" and "non-project reserved water rights" to surface streams. These water rights are Indian reserved water rights held in trust by the United States and awarded in full satisfaction of the Tribes' historic reserved water rights claims. Both Tribes will also receive water rights for the beneficial use of tributary ground water from individual domestic and livestock wells. Under the terms of the Agreement, the parameters of each of these water rights have been described in detail.

The Agreement also provides the Southern Ute Indian Tribe with water from the Florida Project, an already completed Bureau of Reclamation facility, and acknowledges the water rights from the Pine River previously vested in the Southern Ute Indian Tribe. Finally, both Tribes' existing beneficial uses of surface water and ground water are protected by the Agreement.

Pursuant to the Agreement, the Ute Mountain Ute Indian Tribe will receive the right to beneficially use 25,100 acre-feet per annum of project reserved water from the Dolores Project, 33,000 acre-feet per annum of project reserved water from the

Animas-La Plata Project, and 27,400 acre-feet per annum of non-project reserved water from three streams flowing through the reservation. The Southern Ute Indian Tribe will receive the right to beneficially use 29,900 acre-feet per annum of project reserved water from the Animas-La Plata Project and over 10,000 acre-feet per annum of non-project reserved water from various other water sources serving the reservation.

Implementation of the Agreement will require action by the Colorado district court and state and federal legislation. With respect to the Colorado district court action, the Agreement calls for the parties to present a proposed stipulation to the court reflecting the terms of the Agreement. Pursuant to the Agreement, the Colorado district court will not be asked to enter its decree until the necessary legislative enactments have been obtained.

The Agreement calls for three Colorado legislative enactments authorizing and appropriating funds for: (1) the $6 million construction of the Towoac pipeline to the Ute Mountain Ute Reservation; (2) the state's $5 million contribution to the tribal development funds; and (3) the final $5.6 million of the state's financing for the Animas-La Plata Project. As of the date of this joint statement, the first two of these three requirements have been met.

As for federal legislation, certain terms of the Agreement can be implemented only if Congress acts. This is why S. 1415 has been introduced.

IV.

EXPLANATION OF S. 1415

An analysis of the provisions of S. 1415 follows.

Section 1

This section provides the short title of the Act, which is the "Colorado Ute Indian Water Rights Settlement Act of 1987."

Section 2

This section sets forth the congressional findings upon which the Act is premised.

Section 3

In section 3, various terms used in the Act are defined. The term "Dolores Project" is defined to include recognition of the fact that the project's authorized purposes have been expanded upon by the Colorado River Basin Salinity Control Act. The Agreement's definition of the term "Dolores Project" did not recognize this fact. This was an inadvertent oversight in the Agreement.

The term "final consent decree" references the final consent decree contemplated in article VI, section A, of the Agreement. The quantification of the Tribes' reserved water rights will be accomplished pursuant to the McCarran amendment. Therefore, a final consent decree in the Colorado district court is required. It is only through this process and with the final consent decree that the water rights will vest in the Tribes.

The other terms defined in the Act are self-explanatory.

Section 4

Subsection 4(a)

This subsection is not required by the items enumerated in article VI, section A, subsection 1, of the Agreement. However, as understood by the Tribes and the State of Colorado, the Department of the Interior is concerned that the Secretary might lack authority under existing federal law to supply water from the Dolores and Animas-La Plata Projects to satisfy the Tribes' project reserved water rights. Accordingly, this subsection is intended to make clear the Secretary's authority to do so.

An amendment to this subsection and to the section 4 heading is now jointly proposed by the Department of the Interior, Department of Justice, Colorado, and the two tribes (see Attorney General Woodard's December 3, 1987, written statement submitted to this committee for the proposed amendment language). This amendment does not change the water rights which will be granted to the Tribes under the December 10, 1986 Final Settlement Agreement and is not a substantive change. The section was originally titled "project reserved waters" and the amendment would change the section title to "Tribal reserved waters." This change is proposed because the term project reserved waters is not used or defined elsewhere in S. 1415.

Subsection 4(b)

A waiver of federal reclamation laws is required by article VI, section A, subsection 1.c, of the Agreement. Subsection 4(b) effects this waiver and has also been fashioned to resolve an ambiguity in the wording of the Agreement which arises because some federal reclamation laws are arguably federal laws that pertain "to the Colorado River or its tributaries, including the appropriation, use, development, storage, regulation, allocation, conservation, exportation or quality of those waters" (see article V, section B, subsection b of the Agreement). It is the intent of the Agreement that the federal laws encompassed by the quoted language from article V, section B, subsection b, not be waived.

Subsection 4(b) resolves this ambiguity and preserves the intent of the Agreement by providing that federal reclamation laws shall not apply to the water supplied to the Tribes from the Dolores and Animas-La Plata Projects except to the extent that those laws may also apply to the Tribes' non-project reserved water rights, which rights are direct flow water rights whose source does not involve any federal reclamation projects. Put another way, subsection 4(b) reconciles the requirement of article VI, section A, subsection 1.c with the language found in article V, section B, subsection b, thereby preserving the intent of the Agreement that the Tribes' use of their water be subject to the "Law of the Colorado River."

The purpose of this subsection is to insure that project reserved waters are not treated any differently, except as provided for in the Agreement, than any of the Tribes' non-project reserved waters simply because a reclamation project is the source of the project reserved water. This subsection would waive those provisions of federal reclamation law which impose, for example, project boundary, acreage, and land classification limitations, or which limit leasing of water supplied from the Animas-La Plata and Dolores Projects. This waiver of reclamation law is intended only to result in water supplied from the two projects having the same legal status as the Tribes' non-project (i.e., direct flow) reserved water rights. Consequently, those reclamation laws, if any, which may apply to the Tribes' non-project reserved water rights are not waived by this subsection and continue to apply, if at all, both to the Tribes' project and non-project reserved water rights.

Subsection 4(b) implements, among other things, those provisions of the Agreement which address off-reservation use of tribal waters. With respect to in-state leasing of tribal waters, subsection 4(b) implements the requirement of article V section B, subsection a, of the Agreement that tribal leasing will be free of any applicable reclamation law restriction which may be imposed on the Tribes' project reserved waters supplied from the two federal reclamation projects. Then, with respect to out-of-state leasing, subsection 4(b) affirms that any restrictions imposed on out-of-state uses by article V, section B, subsection b, of the Agreement shall include only those reclamation law restrictions, if any, which apply to the Tribes' non-project reserved waters.

Subsection 4(b) does not relieve the Tribes of their financial obligations on the Dolores and Animas-La Plata Projects, which obligations remain in effect under reclamation law as modified by section 6 of the bill. In addition, reclamation laws which are required to protect other project users as set out in article III, section A, subsections 1, and 2, and article III, section B, subsection 1 of the Agreement are not waived.

An amendment to subsection 4(b) is jointly proposed by the Department of the Interior, Department of Justice, Colorado and the two tribes is merely for clarification and does not effect a substantive change (see Attorney General Woodard's December 3, 1987, written statement to this committee for the proposed amendment language). The revised subsection means the same thing as subsection 4(b) in the bill as introduced.

Section 5

Subsection 5(a) is required by article VI, section A, subsection 1.a, of the Agreement. It fulfills the requirement of the "Nonintercourse Act," 25 U.S.C. sec. 177, by providing congressional authorization to the Tribes to lease, sell, exchange or otherwise temporarily dispose of their water. This authorization is required to permit the Tribes to lease or joint venture their water. Subsection (a) provides that such contracts cannot exceed 50 years in duration and that secretarial approval of tribal water contracts is required. Moreover, subsection 5(a) provides that the Tribes' use of their water be consistent with the terms of the Agreement. Because the Agreement is expressly neutral on the issue of whether the Tribes may lease their water out-of-state, it is important to note that subsection 5(a) is limited to releasing the restrictions of 25 U.S.C. sec. 177, and, as described below, does not change existing state and federal law relating to out-of-state leasing.

Subsection 5(c) confirms that Congress' authorization to permit the Tribes to sell, exchange, lease, or otherwise temporarily dispose of their water as provided in subsection 5(a) does not affect any state law or federal law relating to the Colorado River or its tributaries. Subsection 5(c) makes it absolutely clear that the congressional permission given by subsection 5(a) does not, in and of itself, constitute congressional authorization to lease water out-of-state. It is equally clear that subsection 5(c) does not, in and of itself, impose any barriers to tribal leasing. The result is that, except for meeting the requirements of 25 U.S.C. sec. 177, the Tribes stand in exactly the same position with regard to out-of-state leasing as they would stand without this section. In summary, article V, section B, subsection b, of the Agreement and subsection 5(c) of the Act expressly confirm the fact that the Tribes may lease water out-of-state only after they have cleared any and all legal obstacles to out-of-state leasing of water. Subsection 5(c) is addressed only to subsection 5(a).

Subsection (b) pertains to secretarial consideration of tribal water use contracts. It is not required by the Agreement. Subsection (b)(1) imposes a time limit during which the Secretary must either approve or disapprove a contract, and also provides for compliance with section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. sec. 4332(2)(c)). Subsection b(2) sets out the criteria under which the Secretary must review the tribal water use contracts. The subsection makes the best interest of the Tribe the standard to apply for review. Subsection (b)(3) states that the Secretary shall not be liable for any approval of a tribal water contract if it turns out that the contract was a poor business transaction which resulted in a loss to the Tribe.

Subsection (d) provides that proceeds from a water use contract cannot be distributed to individual tribal members. This subsection was not required by the Agreement.

An amendment to this section is jointly proposed by the Department of the Interior, Department of Justice, Colorado and the two Tribes (see Attorney General Woodard's December 3, 1987, written statement submitted to this committee for the proposed amendment language). With this amendment proposal, the parties merge subsections 5(a) and (c) of the bill as introduced into a single subsection 5(a). The parties do not intend to effect a substantive change to the section with this merger.

The section was changed to clarify the point that all the parties intended to accomplish in section 5 was a removal of the restrictions of the Nonintercourse Act to temporary sales or leases of tribal water. The removal of this barrier does not amend, construe, supersede or preempt any other applicable state law, federal law, interstate compact or international treaty affecting the Colorado River or its tributaries which may otherwise regulate or condition any such sale. The parties recognize that such laws (including, but not limited to, the reserved rights doctrine) may present legal barriers to out-of-state sales of water. The removal of the Nonintercourse Act does not, in and of itself, authorize or enable the off-reservation use of water.

Section 6

Section 6 of the Act implements the deferrals set out in article III, section A, subsection 1; article III, section A, subsection 2.h; and article III, section B, subsection 1.h; of the Agreement and serves several important purposes. First, it ensures that the Tribes' use of project reserved waters is not unduly burdened by project costs. Second, section 6 implements those provisions of the Agreement which require the Secretary to bear selected annual operation, maintenance, and replacement costs allocable to the Tribes' until the Tribes' water is actually put to use. Third, the Tribes agree that any transfer of project reserved water outside of the respective project boundary will not operate to the detriment of the other project water users.

Subsection (a) provides that the Secretary shall defer, without interest, the repayment of the construction costs which are allocable to each Tribe's municipal and industrial water allocation from the Animas-La Plata and Dolores Projects until water is first used. Operation and maintenance costs ("O & M costs") are likewise deferred. When an increment of its water allocation is first used by a Tribe, repayment of that increment's pro rata share of construction costs commences and the Tribe begins to bear the pro rata share of O & M costs.

Subsection (b) makes the same provisions for each Tribe's agricultural irrigation water allocation from the two projects, except that O & M costs are deferred only for the Animas-La Plata Project.

Under specifically described circumstances, subsections (c) and (d) provide for further deferrals of the financial obligations of the Tribes with respect to the Animas-La Plata and Dolores Projects.

Subsection (e) defines when water shall be deemed to be used by the Tribes for the purpose of determining when their financial obligations pursuant to subsections (a) through (d) are triggered.

Subsection (f) authorizes the appropriation of such funds to the Secretary as are needed to pay for the O & M costs which the Secretary is directed to bear pending the use of water by the Tribes.

Subsection (g) implements a provision of the June 30, 1986, "Binding Agreement for Animas-La Plata Project Cost Sharing." It provides that the costs of the Animas-La Plata Project which are in excess of the irrigators' ability to repay and which are therefore to be repaid from the Upper Colorado River Basin Fund shall be repaid in 30 equal annual installments from the date that water is first available for use. This subsection is a change from the current method of repayment used by the Interior Department. The current administrative method provides for a 50 year repayment schedule with most payments due at the end of the 50 year period. However, as noted in Governor Romer's statement, this change in repayment methodology will not affect the rate charged to power customers.

Section 7

The establishment of the tribal development funds is required by article VI, section A, subsection 1.d, of the Agreement. Section 7 of the Agreement requires the establishment of a tribal development fund for each Tribe. It authorizes the federal appropriation of a total of $49.5 million to the funds, payable in three annual installments, as follows: $19.5 million in year one, $15 million in year two, and $15 million in year three. Subsection (b) provides for an additional interest payment if the three annual installments authorized by subsection (a) are not made as called for by that subsection. These federal appropriations are supplemented by the $11 million State of Colorado appropriation to the tribal development funds. The state appropriations have already been made.

Subsection (c) sets forth how monies in the two funds shall be invested by the Secretary and the process by which each Tribe may submit its own tribal investment plan. A further provision is made for the tribal submittal of economic development plans for the expenditure of the monies in a fund.

Subsection (d) provides that no part of the principal of the tribal development funds, or of the income accruing from such funds, shall be distributed to a member of either Tribe on a per capita basis.

Section 7 not only authorizes the appropriation of the federal monies required to meet the United States' obligation for the tribal development funds, it also establishes a procedure for the development of a tribal economic plan which is to be approved by the Secretary if "it is reasonably related to the economic development of the Tribe." The plan may be altered in the future, subject again to secretarial approval. There can be no per capita distribution of the funds unless the Secretary approves.

The development funds represent a means by which the Tribes may put to use the water rights to be decreed by the Colorado district court. The funds reflect contributions from the State of Colorado and the United States in recognition of the significant amounts of money which will be saved by all parties by avoiding litigation and settling these ubiquitous water claims.

The funds also reflect federal payment in settlement of the Tribes' allegations of substantial breach of trust duties by the federal government. With the exception of the Pine River on the Southern Ute Indian Reservation, the federal government has not assisted the Tribes in developing the lands of their reservations. To the contrary, the United States has consistently encouraged the use by non-Indians of the water resources belonging to the Tribes which are necessary to the development of the lands. For example, the Mancos River flows through the Ute Mountain Ute Indian Reservation. On this river the United States developed the Jackson Gulch Reclamation Project. This project serves non-Indian lands in southwest Colorado but provided no benefits to the Ute Mountain Ute Tribe, which is also served by water from the Mancos River. Likewise, the United States has kept, for its own uses, revenues derived from the generation of power facilities on the Colorado River facilities which are driven, in part, by unused and undeveloped tribal water.

Finally, the United States has failed to fulfill its 1968 promise to Colorado, New Mexico and these Tribes, that it would develop the Dolores and Animas-La Plata Projects simultaneously with the Central Arizona Project. The Tribes are prepared to advance these claims in litigation, but are willing to see those claims extinguished in the settlement.

Section 8

This section is required by article VI, section A, subsection 1.f, of the Agreement. Section 8 implements important provisions of the Agreement which assure that the settlement constitutes a complete resolution of the tribal claims related to water. The legislation authorizes waiver of any additional claims the Tribes may have, including any damage claims against the United States, the State of Colorado, or any other entity or person. As set forth in the Agreement, the tribal waivers for the Animas and La Plata Rivers are not binding until Phase I of the Project, as described in the June 30, 1986, cost-sharing agreement, is completed. Likewise, on the Mancos River, the waiver is not effective until the the Dolores Project facilities to deliver the tribal water allocations are completed. Finally, the tribal claims arising out of the government's failure to perform its obligations under this legislation remain viable.

Section 9

This section is required by article IV, section A., subsection 1.g, of the Agreement. Section 9 directs the Secretary of the Interior to comply with those negotiated administrative procedures which impose upon the Secretary specific responsibilities as set forth in article IV of the Agreement. In order to assure that the water rights of the Tribes and non-Indians are utilized to their mutual benefit, detailed administrative provisions were included in the Agreement to protect the interests of all parties. The administration provisions contemplate close coordination by State of Colorado officials and the two Tribes and calls for a cooperative effort to involve the United States and Colorado in the protection of water resources for all parties affected by the Agreement. An amendment to section 9 is jointly proposed by the Department of the Interior, Department of Justice, Colorado and the two Tribes (see Attorney General Woodard's December 3, 1987, statement submitted to this committee for the proposed amendment language). This amendment merely tracks the wording called for by the December 10, 1987 Final Settlement Agreement.

Section 10

This section fulfills the federal obligation found in article VIII, section G of the Agreement. Section 10 ensures that the design and construction of the Animas-La Plata and the Dolores Projects by the Bureau of Reclamation shall be subject to the provisions of the Indian Self-Determination and Education Assistance Act, 88 Stat. 2203, 25 U.S.C. 450. This provision is required to permit the Tribes the opportunity to participate in the design and construction of the Dolores and Animas-La Plata projects so long as such participation does not detrimentally affect the projects' construction schedules.

Section 11

Subsection 11(a) provides that the Act is to be construed in a manner consistent with the Agreement and with the intent of the parties, as that intent is expressed in the Agreement. Subsection 11(b) is required by article VII section J of the Agreement.

Section 12

This section provides that sections 4(b), 5, and 6 shall take effect only after the final consent decree is entered by the Colorado district court. Consequently, if for any reason the consent decree cannot be entered by the Colorado district court, the Nonintercourse Act provision, the project repayment deferrals, and the project reclamation law waiver will not occur. This section further describes how monies appropriated to the tribal developmental funds shall be handled pending the entry of the final consent decree, or in the event a final consent decree is not entered by December 31, 1991. If a final consent decree is not entered by December 31, 1991, the Agreement may be voided. Although the Agreement did not contain a cutoff date of December 31, 1991 for the entry of the final consent decree, the Tribes, Colorado and the United States agreed that a date certain was necessary and should be included in this Act.

pitkin county

1987 DEC -2 AM 8 39

December 1, 1987

Senator Daniel K. Inouye, Chairman
Select Committee on Indian Affairs
SH 722art Senate Office Building
Washington, D.C. 20510

Re: For Hearing Record of the December 3, 1987 Hearings on Senate Bill S1415

Mr. Chairman
Members of the Committee:

My name is Bob Child. I am a 26 year resident of "Old" Snowmass, Colorado, and a 41 year resident of Colorado. I am the owner-operator of a cow-calf operation in the mountains of Colorado. Presently I am nearing the end of a 12 year stint as a County Commissioner in Pitkin County, and I am serving in my third term as a Director of the Colorado River Water Conservation District. I have long been an active participant in the environmental movement in the State, indeed I am the promoter of an "environmental summit" scheduled for December 5.

This background information is important in the measuring of the value of my testimony here.

As a long time Coloradan the history of the Ute tribes is familiar to me, and has always represented to me a sordid chapter in the history of this country. The operator of a 1500 acre ranch in the mountain country, I live in what was once a spring and summer hunting ground of the Utes. Marshall Sprague in his book, "Massacre: The Tragedy at White River", describes the annual trips of Chief Ouray through the country that I now inhabit. The import of this is that our ranch is blessed with abundant springs which flow year 'round in addition to several miles of Capital Creek.

As a politician I hope that I have learned the doctrine of fairness, but also that I have acquired an ability for decision-making which permits only a reasonable degree of influence by the emotions. My duties with the River District give me a perspective on the water issues involved.

My interest in this issue springs from an incidental contact I had with representatives of the Ute Mountain Utes during a public meeting in Durango, Colorado in 1982. Following that meeting I have remained in touch with the tribe, primarily through Michael Preston, Community Service representative. That first contact was followed by a lengthy visit with the Tribal Chairman, Terry Knight and a complete tour if the tribal water facilities. This was followed by study of the tribal treaties and the Winters Doctrine.

One powerful message was delivered to be by this chain of events and circumstances. That is that the United States has yet to meet its obligation to the tribes, which were in 1882 removed from their well-watered home in the mountain country to the deserts of Colorado and Utah. All of us in the United States share the burden of meeting this obligation. Representatives of the tribes and of the State of Colorado have worked together toward a cooperative agreement which satisfies legitimate claims at a substantially reduced cost, and to further this agreement the State has agreed to a cost-sharing formula for the Animas-LaPlata project.

The issues of the Colorado River Compact, exportation of water, and the environmental impact have been raised. I suggest that treaties and Winters preceded the Compact; that any exportation arising from this agreement and legislation cannot be considered precedential because of the singular circumstances here; and that environmental concerns can and will be mitigated.

Chairmen and Committee members, I urge you to give S1415 favorable consideration.

Sincerely,

Robert W. Child

Robert W. Child

cc: Senator Armstrong
Senator Wirth
Representative Campbell
Sam Maynes

AIO
Americans for Indian Opportunity

LaDonna Harris
President

Honorable James Abourezk

Lionel Bordeaux
Rosebud-Sioux

Joan Bordman
Sioux

Edgar Bowen
Coos-Oregon

Mary Jo Butterfield
Makah

Phyllis Old Dog Cross
Mandan-Hidatsa

Andy Ebona
Tlingit

Coy G. Eklund

LaDonna Harris
Comanche

Minerva Jenkins
Ft. Mojave

Louis LaRose
Winnebago

Charles Lohah
Osage

Grace McCullah
Navajo

Jerry Muskrat
Cherokee

Elma Patterson
Tuscarora

Joe S. Sando
Jemez Pueblo

Vicky Santana
Blackfeet

Eddie L. Tullis
Alabama Creek

A. David Lester
Creek

November 17, 1987

The Honorable Daniel Inouye
United States Senate
Washington, DC 20510

Dear ~~Senator~~ David Inouye:

As you know Americans for Indian Opportunity (AIO) is an organization designed to assist *inter alia* American Indian tribes to develop their reservations as permanent homelands. The most valuable resource of many reservations, particularly in the west, is their renewable water resources.

Over the years I have worked with the Colorado Ute Tribes in their numerous attempts to resolve their *Winters* rights to water and am personally pleased that such resolution may occur by conciliatory legislation rather than by expensive and protracted water rights litigation which could impair tribal relationships with their non-Indian neighbors.

In addition, it is my understanding that the language of the proposed legislation was arrived at with the substantial participation of the states of Colorado and New Mexico and the United States Departments of the Interior and Justice. It represents a settlement of longstanding claims which other tribes may want to study and to adopt in the resolution of their *Winters* rights with appropriate changes reflecting the hydrologic and legal peculiarties of other watershed basins. Moreover, any commitment by the United States and the state of Colorado to establish water development/use funds to assist the tribes in the utilization of their *Winters* rights would be most welcome by all parties.

Thank you very much.

Warmest personal regards,

LaDonna Harris

LDH/dkm

cc: Chairman Ute Mountain Ute
Chairman Southern Ute

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December 11, 1987

Honorable Daniel Inouye
U.S. Senate Select Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510

Re: S.B. 1415

Dear Senator Inouye:

The purpose of this letter is to submit into the record for the December 3, 1987 hearing on this matter a brief response to the joint statement of the States of Arizona, Nevada and California submitted at the hearing on December 3, 1987 as they relate to the role of the law of the Colorado River and the possibility of the Tribes' leasing their reserved water out of state.

1. The lower basin states in a series of submissions dated December 3, 1987 purport to summarize relevant portions of the law of the River and to show that any effort by the Southern Ute and Ute Mountain Ute Indian Tribes to lease their reserved water outside of the State of Colorado will fundamentally undermine the comprehensive water use limitations inserted into 1922 compact. In making this argument the lower basin states conveniently omit reference to Article VI and Article VII of the 1922 compact. Article VII states:

> Nothing in this Compact shall be construed as affecting the obligations of the United States of America to Indian Tribes.

2. Moreover Article VI(a) specifically acknowledges that certain waters of the Colorado River system are not covered by the compact. Article VI(a) and VII when read together with the ample "legislative history" of the 1922 compact make it abundantly clear that the compacting states did not intend to dictate (in the absence of participation by the Tribes and by the Tribes' trustee), precisely how use of the Tribes' waters was to be restricted.

3. Because the lower basin states fail to bring to the attention of Congress all of the relevant portions of the law of the River, the lower basin states' conclusion that the law of the River bars interstate and interbasin transfers of the Tribes' waters is neither complete nor accurate.

4. The legal analysis of the lower basin states as it relates to the reserved rights waters of the Tribes is also incomplete and inaccurate. While they correctly point out that one of the principal purposes of setting aside water for the Tribes is to add to the productivity of the Reservations, the states fail to acknowledge that the Tribes' purpose here of temporarily leasing reservation waters out of state is to finance water storage and other capital improvements for the reservations in order to make them self-sufficient. Again while the lower basin states correctly point out that the reserved water is to be used to fulfill the needs of the Tribes, the lower basin states continue to ignore that the revenue flow from the temporary out of state leasing of that water may well be the only available source of financing for the capital structures which are required to make the Ute Mountain Ute and Southern Ute Indian Reservations truly permanent homelands. Indeed, without this revenue flow, it will be difficult for the Ute Mountain Ute Tribe to construct all of the Phase 2 irrigation facilities envisioned in the December 10, 1986 Colorado Ute Water Rights Settlement Agreement.

5. The lower basin states repeatedly insist that the purposes of establishing the reservations permit only the use of water for on-reservation agriculturral purposes. They are incorrect. In fact, the purpose of establishing the reservations has been acknowledged by the courts to be the creation of permanent homelands for present and future generations of Indians. Indeed, as early as the nineteenth century Congress expressly permitted the Tribes to develop their oil and gas reserves for off-reservation markets in order to permit the Tribes to create homes, schools, and the infrastructure for towns and communities all located on the reservations. We agree that the purpose in creating a permanent homeland on the reservation sets the manner and scope of how the reserved water rights may be productively used. As we have described here, off-reservation out of state leasing on a temporary basis to help finance reservation infrastructure, including water resources development, is entirely consistent with that federal purpose.

6. Not only do the lower basin states decline to provide Congress with a complete and accurate statement of the law of the River, but in proposing that a congressional prohibition on out

of state leasing be introduced into S.B. 1415, the lower basin states may be treading in impermissible territory. Thus, if the Tribes are correct and the law of the River when taken in conjunction with the Commerce Clause indeed permits the Tribes to lease their water out of state, then proposing a congressional barrier to the exercise of such federally secured rights may well violate Article I "The Compact Clause" of the United States Constitution. Federal law is clear that individual states to a compact may not unilaterally amend the compact. It may only be amended by all signatory states. *City Area Transportation Authority v. State of Missouri*, 640 F.2d 173 (8th Cir. 1981). Moreover, Congress does not have the power to unilaterally amend a compact. *Mineo v. Port Authority of New York and New Jersey*, 779 F.2d 939 (3rd Cir. 1985) and *Tobin v. United States*, 306 F.2d 270 (D.C. Cir.), *cert denied*, 371 U.S. 902 (1962). In *our* view the lower basin amendments to S.B. 1415 submitted at the December 3, 1987 hearing constitute a proposal to have Congress unilaterally amend the 1922 Compact and to deprive the Tribes of an opportunity which the states themselves preserved sixty five years ago.

7. Thank you very much for permitting us to file this short response to the testimony and written submissions of the lower basin states. Please include this letter in the December 3, 1987 hearing record.

Very truly yours,

Daniel Israel

Daniel H. Israel

DHI:ie

cc: Ernest House, Chairman
Ute Mountain Ute Tribe

Leonard Burch, Chairman
Southern Ute Tribe

Pat Zell, Esq.
Scott B. McElroy, Esq.

Council of Energy Resource Tribes
1580 Logan Street - Suite 400
Denver, Colorado 80203-1941
(303) 832-6600

October 21, 1987

The Honorable Daniel Inouye, Chairman
Senate Select Committee on Indian Affairs
Room 838, Hart Building
Washington, D. C. 20510

Re: Colorado Ute Water Settlement Agreement
S.B. 1415

Dear Senator Inouye:

The purpose of this letter is to urge your Committee to support S.B. 1415.

The Council of Energy Resource Tribes (CERT) is a tribal organization composed of 43 federally recognized Indian tribes, and dedicated to the protection, management, and development of their natural resources for the purpose of utilizing them to develop viable, stable, and diversified reservation economies. While much of CERT's focus is on maximizing the benefits to the Tribes of depletable energy resources, the member tribes that govern the organization have consistently maintained a significant interest in assisting Tribes to develop their renewable resources in order to assure that the reservations remain as permanent homelands. Chief, of course, among the Tribes' renewable resources are their valuable water rights.

We have watched with admiration the successful efforts of the Ute Mountain Ute and Southern Ute Indian Tribes to develop a consensus approach to resolving their long standing water rights claims in Colorado and New Mexico, which assists, and does not injure, their non-Indian neighbors. CERT considers the Agreement of December 10, 1986 between the states of Colorado, New Mexico and the two Ute Tribes as a model for how state and Indian resource conflicts in the West should be resolved. S.B. 1415 implements that Agreement and is entitled to the strong support of Congress.

Sincerely,

A. David Lester

A. David Lester
Executive Director

ADL:dp

Executive Committee:
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Ute Mountain Ute
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Pawnee
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Saginaw Chippewa
Seminole of Florida
Shoshone - Bannock
Southern Ute
Spokane
Standing Rock Sioux
Tule River
Turtle Mountain Chippewa
Umatilla
Ute
Walker River
Zia Pueblo

Executive Director:
A. David Lester

ENVIRONMENTAL POLICY INSTITUTE

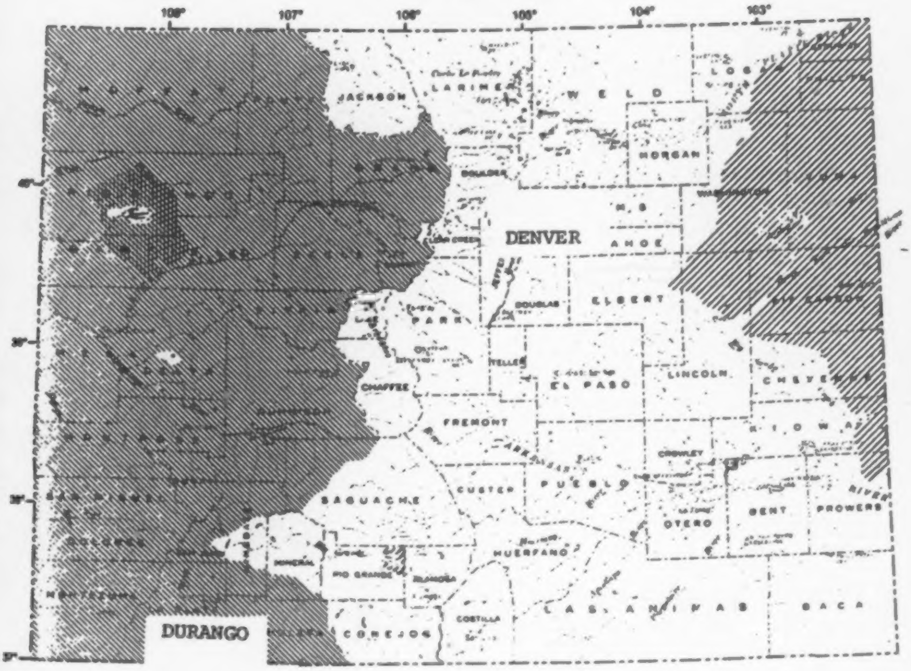
AN ANALYSIS OF THE ANIMAS LA PLATA PROJECT

DURANGO, COLORADO

JULY, 1987

PETER CARLSON
DIRECTOR
WATER RESOURCES

SPENCER WILSON
RESEARCH ASSOCIATE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218 D Street, S.E., Washington, D.C. 20003 (202) 544-2600

The Environmental Policy Institute is a Washington, D.C. based non-profit, public interest organization engaged in research, public education and lobbying. The organization specializes in energy, water and agricultural resource issues.

The authors of this report would like to thank the Bureau of Reclamation, the State of Colorado, the Ute Mountain Ute and Southern Ute Indian Tribes and their attorneys, the sponsoring Conservancy Districts, the Taxpayers for an Animas La Plata Referendum and other interested individuals who have provided valuable assistance in the preparation of this report.

The content of this analysis is solely that of the Environmental Policy Institute and in no way seeks to reflect the overall views of parties involved in this project.

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INTRODUCTION

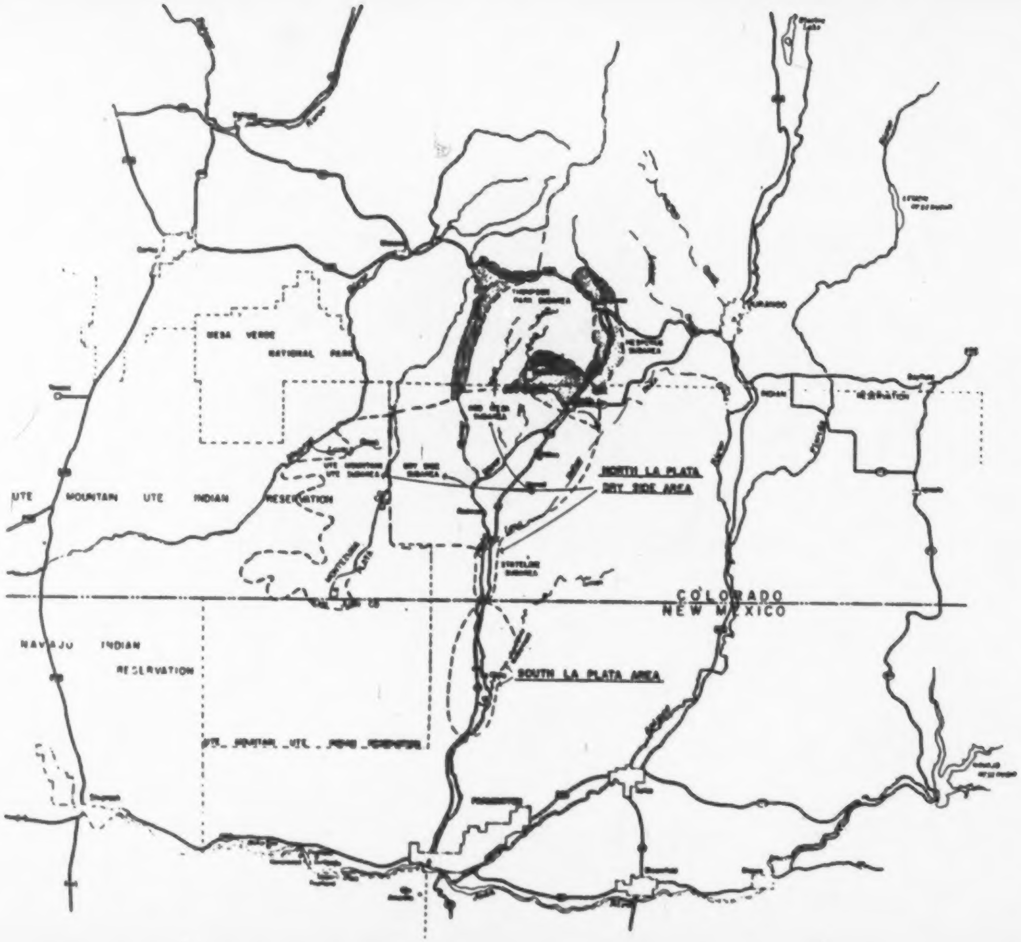
In the Spring of 1987, after many years of being involved in the Animas La Plata Project, the Environmental Policy Institute decided to undertake an in-depth analysis of the project. The analysis in part was an outgrowth of a meeting with representatives of the two Tribes involved in the project, who suggested that we lay out the problems which we saw with the project and put forth some alternatives that were more environmentally, socially, and economically sound.

This report is a result of reviewing over twenty different documents - some government, some public, and some private - to reveal what was contemplated by the Bureau of Reclamation by way of construction of the Animas La Plata Project. The review was complex because since the development of the project Environmental Impact Statement in the late 1970's and the preparation of the Definite Plan Report for the project in the same period, the project has just recently been divided into a Phase I and a Phase II. In addition, an Indian Water Rights Settlement has been reached with the Tribes, the State, Conservancy Districts and the Department of Interior which further complicates the project.

Our review attempts to consolidate the material from all of the basic documents and put in one place the issues, problems, and concerns so that those concerned about the project can judge for themselves whether this particular project is the best way to proceed. Over the years we had found that not everyone could agree upon the facts as to what this project would or would not do. Some of the financial data and cost figures used in the report are from 1979 and we have attempted to identify them as such. Other figures are as current as the Spring of 1987.

Some may quesstion the presentation of the project in this report. I would like to stress that without exception, all of the material utilized in the preparation of this report, all the facts and figures, can be found in the documents reviewed for the project and was not created out of thin air. If there are conflicts, it can only point to the need for updating project documents before proceeding with a reconstituted Animas La Plata Project.

Peter Carlson
July, 1987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NORTH LA PLATA
DRY SIDE AREA
SOUTH LA PLATA AREA
MESA VERDE
NATIONAL PARK
UTE MOUNTAIN UTE INDIAN RESERVATION
NAVAJO INDIAN
RESERVATION
UTE MOUNTAIN UTE INDIAN RESERVATION
DURANGO
INDIAN
RESERVATION

PROJECT HISTORY

The Animas La Plata project was authorized by the Colorado River Basin Act of September 30, 1968, as a participating project under the Colorado River Storage Project Act of April 11,1956. Since that time, the project has undergone reviews and studies by various Federal Agencies. The Final Environmental Impact Statement (EIS) on the project was filed in 1980. The Definite Plan Report (DPR) on the project (the Bureau of Reclamation's guiding construction document) was approved in August of 1980.

There has been $5,930,695 spent on the project to date. This money has been for studies but not for actual construction. The total to be allocated for the construction of the project is $586,561,000. Because of the rather unorthodox way in which this project is to be constructed - Phase 1 and Phase 2 - the costs and repayments for the project are difficult to ascertain at times as well as the ultimate project design.

THE PROJECT DESIGN

According to the EIS and the DPR, the Animas River would be the principal source of project water. Water would be diverted from the river by the Durango pumping plant, located immediately south of town, and conveyed to Ridges Basin Reservoir through the 2.1 mile-long Ridges Basin Inlet Conduit. The water would be stored at Ridges Basin Reservoir, an offstream site located on Basin Creek 3 miles southwest of Durango.

Municipal water for Durango would be delivered from a valve station on the inlet conduit to a new water treatment plant to be constructed near the divide between the Animas river and the reservoir. At times when the Durango Pumping Plant would not be in operation, flows in the inlet conduit to the valve station would be from Ridges Basin Reservoir. The Durango M&I Pipeline would deliver water from the new treatment plant to existing water mains at the south edge of Durango.

Municipal water for New Mexico communities would be supplied from the Animas River, supplemented by releases from Ridges Basin Reservoir outlet works to Basin Creek, a tributary of the Animas River. Water would be pumped from the reservoir to the Dry Side Canal for deliveries to the west in the La Plata and Mancos River drainages.

The Dry Side Canal, 27.5 miles long including the long hollow Tunnel, would deliver water to seven turnout points. These turnouts would provide delivery of water to full and supplemental service lands in the North La Plata Dryside

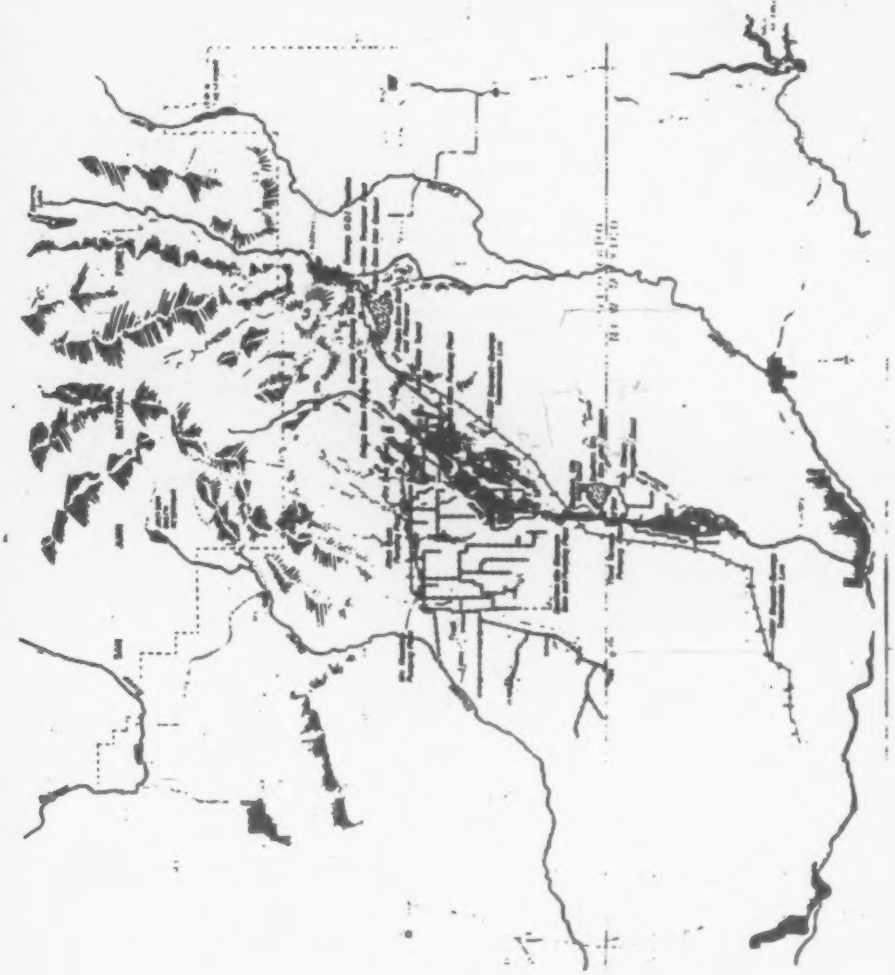
Phase 2 areas through pressurized pipe laterals. The Red Mesa, Alkaki Gulch, and Ute Mountain Pumping Plants (Phase II), located beside the canal would pressurize three of the laterals. The other four laterals would have sufficient pressure because of the elevation difference between canal and farm turnouts. Municipal and industrial water would be delivered to the Ute Mountain Ute Indian Reservation at the end of the Dry Side Canal.

4,600 acres of supplemental service lands above the Dry Side Canal would receive additional water through existing diversions and distribution facilities by exchange of La Plata River water supplies from lower lands that would be served from the Dry Side Canal.

The Southern Ute Diversion Dam, located on the La Plata River 2.8 miles north of the Colorado - New Mexico State line, would divert flows from the La Plata River to Southern Ute Reservoir through the Southern Ute Inlet Canal. These flows would consist of natural runoff from the La Plata drainage, return flows from irrigated areas upstream, and Animas River water supplied through Dry Side Canal. The Southern Ute pumping plant, located on the inlet canal near the diversion dam, would provide pressure for a pipe lateral system serving lands in Colorado along the La Plata River.

Southern Ute Dam and Reservoir, located at an offstream site east of the river, would provide regulation of water supplies for irrigation in New Mexico and industrial water for the Southern Ute Indian Tribe. The industrial water would be delivered at the outlet works of Southern Ute Dam, and the Southern Ute Indian Tribe would provide facilities for distribution beyond that point. The New Mexico Irrigation Canal, heading at the dam, would provide water to three turnouts serving pressurized pipe laterals for La Plata, New Mexico, lands. Two of these laterals would develop sufficient pressure for sprinkler irrigation from the difference in elevation between the canal and farm turnouts. The third Terrace Pumping Plant would provide pressure for the third lateral.

Operation and maintenance of the project reclamation and joint use facilities would involve three separate entities. The La Plata Water Conservancy District in Colorado would administer those project facilities within its boundaries. The La Plata Conservancy District in New Mexico would administer the project facilities that directly supply project water to lands within its boundaries. The Ute Mountain Ute Indian Tribe would administer the facilities on the reservation. Several entities, including the Bureau of Reclamation, Colorado Division of Wildlife, Colorado Division of Parks and Recreation, the New Mexico Department of Game and Fish, and the Southern Ute Indian Tribe, would



participate in the management of recreation facilities and wildlife lands.

COST SHARING

The Department of Interior required a cost-sharing agreement between the project beneficiaries and the Federal government to repay certain project costs. The parties to the cost-sharing agreement are: the State of Colorado; Colorado Water Resources and Power Development Authority; Montezuma County,Colorado; Animas La Plata Water Conservancy District; New Mexico Interstate Stream Commission; San Juan Water Commission, New Mexico; Southern Ute Indian Tribe; Ute Mountain Ute Indian Tribe; and the Department of the Interior. Under terms of the agreement the Federal government and non-Federal entities will finance the construction of Phase 1. When Phase 2 is initiated at a future date, non-Federal entities will finance its construction.

Phase 1 and Phase 2 construction plans are as follows:

Phase 1

Total construction cost- $ 512,300,000

Ridges Basin Reservoir	$ 100,000,000	Spring 1988
Southern Ute Diversion Dam	$ 2,400,000	Winter 1996
Durango Pumping Plant	$ 35,000,000	Winter 1992
Ridges Basin Pumping Plant	$ 38,000,000	Winter 1994
Red Mesa Pumping Plant	$ 5,100,000	Fall 1995
Ridges Basin Inlet Conduit	$ 23,000,000	Winter 1992
Dry Side Canal	$ 33,000,000	Winter 1993
Long Hollow Tunnel	$ 40,000,000	Fall 1990
Southern Ute Inlet Canal	$ 6,000,000	Summer 1994
Durango M&I Pipeline	$ 1,900,000	Winter 1996
Shenandoah M&I Pipeline	$ 2,400,000	Winter 1992
Laterals	$ 56,900,000	Fall 1992
Drains	$5,100,000	
Permanent Operating Facilities	$ 3,200,000	Fall 1994
Capitalized Equipment	$ 1,000,000	
Cultural Resources	$ 12,000,000	
Future Year Capacity	$ 1,600,000	
Recreation Facilities		
Ridges Basin Reservoir	$ 6,600,000	Fall 1995
Wildlife Mitigation	$ 5,200,000	
Transmission Facilities	$ 900,000	Spring 1994
TOTAL	$ 379,000,000	

Phase 2 (to be built by non-federal interests)

Southern Ute Reservoir	$ 43,000,000
La Plata Diversion Dam	$ 1,700,000
Ridges Basin Pumping Plant	$ 3,900,000
Alkali Gulch Pumping Plant	$ 2,700,000
Ute Mountain Pumping Plant	$ 3,600,000
Southern Ute Pumping Plant	$ 2,900,000
Third Terrace Pumping Plant	$ 2,500,000
Dry Side Canal	$ 3,000,000
Southern Ute Inlet Canal	$ 3,400,000
New Mexico Irrigation Canal	$ 2,400,000
Laterals	$ 47,020,000
Drains	$ 2,700,000
Permanent Operating Facilities	$ 1,600,000
Operating & Maintenance Housing	$ 170,000
Capitalized Equipment	$ 1,200,000
Cultural Resources	$ 5,500,000
Southern Ute Reservoir	$ 3,200,000
Wildlife Mitigation	$ 120,000
TOTAL	$ 133,000,000

The cost-sharing agreement between the Federal Government and the States of Colorado and New Mexico calls for contributions from local interests of $206,195,000 which consists of cash contributions of $68,225,000 and credit for non-Federal construction of deferred facilities totaling $137,970,000. These funds were assigned by purpose for repayments as follows:

Irrigation	$161,095,000
Municipal & Industrial	$ 25,700,000
Cultural Resources	$ 10,900,000
Fish and Wildlife	$ 5,000,000
Recreation	$ 3,500,000

The Animas La Plata Water Conservancy must hold an election within the District on the repayment contract for the project. This election is scheduled for the fall of 1987. This contract was negotiated between the Federal Government (Bureau of Reclamation) and the local district over the course of the past couple of years and finally signed on June 11, 1987. There will also be repayment contracts for the Southern Ute Indian Tribe, the Ute Mountain Ute Indian Tribe, and the San Juan Water Commission.

THE PROJECT AREA

The proposed Animas La Plata project is located in La Plata and Montezuma counties of southwestern Colorado and in San Juan County of northwestern New Mexico. This area is in the eastern part of a region that is frequently called the "four corners area" because of the unique juncture of the States of Utah, Colorado, New Mexico and Arizona. The project area lies within the upper Colorado River Basin and includes the San Juan River and three of its tributaries--the Animas, La Plata, and Mancos Rivers.

The area to be served by the project is subdivided into Colorado and New Mexico portions. The largest city in the Colorado portion is Durango, which is located on the Animas River and is the retail trade center and largest city in southwestern Colorado. To the west and southwest of Durango are the rural communities of Hesperus, Breen, Kline, Marvel, and Redmesa in the La Plata river drainage.

Farmington, the retail trade center of northwestern New Mexico, is the largest city in the New Mexico portion of the project area. Other communities in New Mexico are Aztec, Bloomfield and Blanco to the east of Farmington; La Plata to the north; and Kirkland, Fruitland, Waterflow, Upper Fruitland, Nenahnezad, and Shiprock to the west.

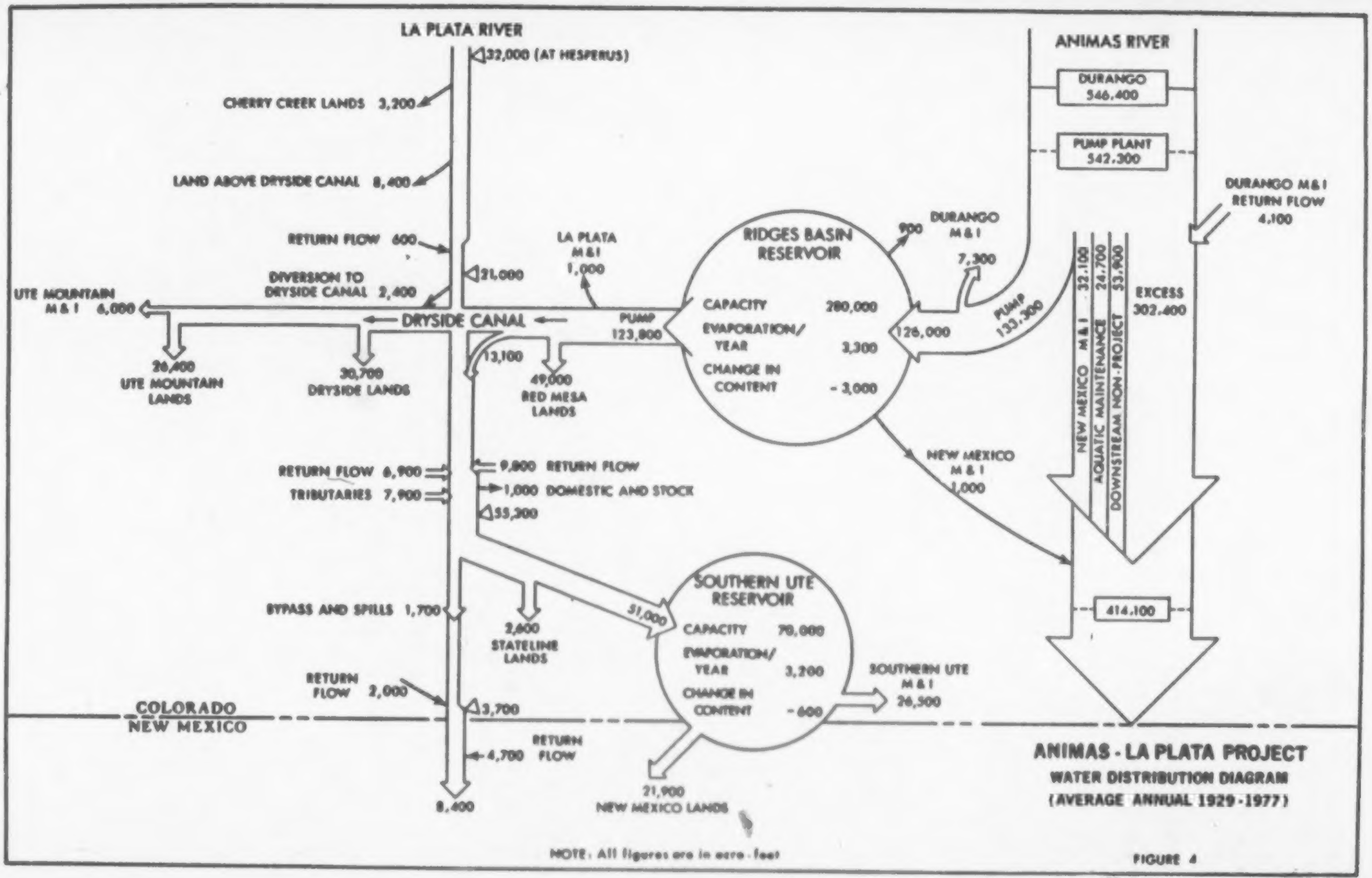
PROJECT PURPOSE

The Environmental Impact Statement on the project refers repeatedly to the need to utilize the flows of the Animas and La Plata Rivers for irrigation and municipal and industrial uses. The Statement also asserts that the project will provide fish and wildlife benefits, recreation facilities, a cultural resources program, and area redevelopment. There is little evidence, however, to support these claims.

According to the 1987 Project Data Sheets of the Bureau of Reclamation for the Animas La Plata, the project is being undertaken for the following authorized project purposes:

Irrigation	67%
Municipal and Industrial Water Supply	24%
Fish and Wildlife	4%
Cultural Resources	3%
Recreation	2%

There is no flood control, power production or water quality improvement associated with the construction of this project. The stated reason for ignoring flood control for the project is the location of the reservoirs offstream. The Definite Plan Report for the project, however, suggests that


LA PLATA RIVER
32,000 (AT HESPERUS)
CHERRY CREEK LANDS 3,200
LAND ABOVE DRYSIDE CANAL 8,400
RETURN FLOW 600
21,000
DIVERSION TO DRYSIDE CANAL 2,400
UTE MOUNTAIN M & I 6,000
DRYSIDE CANAL
LA PLATA M & I 1,000
PUMP 123,800
26,400 UTE MOUNTAIN LANDS
30,700 DRYSIDE LANDS
13,100
49,000 RED MESA LANDS
RIDGES BASIN RESERVOIR
CAPACITY 280,000
EVAPORATION/YEAR 3,300
CHANGE IN CONTENT - 3,000
900
DURANGO M & I
7,300
126,000
PUMP 133,300
ANIMAS RIVER
DURANGO 546,400
PUMP PLANT 542,300
DURANGO M & I RETURN FLOW 4,100
NEW MEXICO M & I 32,100
AQUATIC MAINTENANCE 24,700
DOWNSTREAM NON-PROJECT 53,900
EXCESS 302,400
NEW MEXICO M & I 1,000
414,100
RETURN FLOW 6,900
TRIBUTARIES 7,900
9,800 RETURN FLOW
1,000 DOMESTIC AND STOCK
55,300
BYPASS AND SPILLS 1,700
2,600 STATELINE LANDS
51,000
SOUTHERN UTE RESERVOIR
CAPACITY 70,000
EVAPORATION/YEAR 3,200
CHANGE IN CONTENT - 600
SOUTHERN UTE M & I 26,500
RETURN FLOW 2,000
3,700
COLORADO
NEW MEXICO
4,700 RETURN FLOW
8,400
21,900 NEW MEXICO LANDS

ANIMAS - LA PLATA PROJECT
WATER DISTRIBUTION DIAGRAM
(AVERAGE ANNUAL 1929-1977)

NOTE: All figures are in acre-feet

FIGURE 4

development in the Animas River Valley from Bakers Bridge to the mouth of the river has created a serious potential for disastrous flooding. Moreover, the Animas River Valley is listed by the State of Colorado as one of the ten areas in the State most susceptible to flash flooding according to the Definite Plan Report.

IRRIGATION

The Land

The Animas La Plata project's EIS calls for provision of 118,100 acre-feet of water for irrigation. This water will be used to irrigate 21,480 acres which is presently irrigated and bring into production 48,620 new acres of irrigation.

	CO acres	NM acres	Total acres
Full Service Land			
Non-Indian	30,310	4,530	34,840
Indian	13,400	380	13,780
Subtotal	43,710	4,910	48,620
Supplemental Service			
Non-Indian	17,300	3,720	21,020
Indian	460		460
Subtotal	17,760	3,720	21,480
Total	61,470	8,630	70,100

Topographically, the project area lies in a zone of transition between the La Plata and San Juan Mountains to the north and the Colorado Plateau to the south and west. In Colorado, mesas cut by streams, gulches, and arroyos are particularly prominent in the La Plata river drainage to the southwest. In New Mexico, the relatively narrow valley of the La Plata River and the broader valleys of the Animas and San Juan Rivers are the most prominent topographic features.

Precipitation ranges from 9 inches at lower elevations in the southernmost part of the project area to about 18 inches at higher elevations in the northern part. The rainfall allows for moderately successful dry farming on the higher mesa lands in Colorado.

Project lands have an average elevation above sea level of approximately 6,300 feet (8,400 feet near Hesperus to 5,200 feet near the confluence of the La Plata and San Juan Rivers). Approximately 85% of the lands lie between 6,500 and 7,000 feet above sea level.

Since most of the farming in the project area is done at high altitudes, the frost-free growing season averages only 120 days (138 days at La Plata to 99 days at Hesperus). The growing season generally extends from May 9 to October 13. Temperature and frost conditions limit crop production to hardy field crops such as alfalfa, small grain, and a variety of garden vegetables.

Mechanics of Irrigation

Agriculture is the primary economic pursuit in the Colorado portion of the project area and is also important in the New Mexico portion. The water will be used for: alfalfa, small grains and pasture to support beef, sheep and dairy enterprises. Pinto Beans and grain corn would be grown as the cash crops to help pay for the water.

According to project documents most of the irrigation water would be pumped from the Animas River to the Ridges Basin Reservoir. The dam and reservoir are located approximately 2 miles southwest of Durango. Most of the water for land in Colorado would be pumped from Ridges Basin Reservoir by the Ridges Basin Pumping Plant and conveyed through the Dry Side Canal, except that land too high to be served from the canal would receive water diverted directly from the La Plata River. Water for land in New Mexico would be stored in Southern Ute Reservoir and released to the New Mexico Irrigation Canal.

According to project documents and based on a 49-year study period of simulated operations, the total project water supply would average 198,200 acre-feet annually. The supply would include:

1. 38,400 acre-feet for municipal and industrial use and 16,800 acre-feet for irrigation in New Mexico
2. 101,300 acre-feet for irrigation and 41,700 acre-feet for municipal and industrial use in Colorado

Of the total project water supply, 169,400 acre-feet would be developed from the Animas River, 17,000 acre-feet would be developed from the La Plata River and 11,800 acre-feet would be supplied by the reuse of project return flows to the La Plata River. The 49-year average annual flow in the Animas River at Durango is 546,400 acre-feet. The operational study for the project modified this flow figure down to 542,300 acre-feet to allow for additional development of the city of Durango's water right.

An average annual water supply of 200,000 a/f would be developed by using flows of the Animas and La Plata Rivers. The project would supply full or supplemental water to irrigate 70,100 acres and provide municipal and industrial water for the city of Durango, for the Ute Mountain Ute Indian Tribe, and the Southern Ute Indian Tribe, and for the cities of Aztec and Farmington in New Mexico. 65,500 acres would be sprinkler irrigated and 4,600 acres would be gravity irrigated.

To meet the above needs, 130,000 a/f of active storage capacity would be provided at Ridges Basin Reservoir and 40,000 a/f of active storage at the Southern Ute Reservoir. The project irrigation demand would average 118,100 a/f annually. Of this amount, 21,900 a/f would be used on supplemental service lands and 96,200 a/f on full service lands.

The Dry Side Canal would serve about 57,290 acres, which includes 43,510 acres of nonreservation lands, 1,800 acres of scattered Southern Ute Indian lands, and 11,980 acres of Ute Mountain Ute Indian lands. All of the above acreage is in Colorado, except for 380 acres of Ute Mountain Ute Indian lands in New Mexico.

The full and supplemental service lands below the Dry Side Canal in both Colorado and New Mexico would be sprinkler irrigated. The 43,510 acre service area of the Dry Side Canal includes 1,520 acres of full service lands lying above the canal. The water for sprinkler irrigation of these lands will be by pumping from the Dry Side Canal. There are about 4,600 acres of presently irrigated lands above the Dry Side Canal, which will receive a supplemental supply by exchange through gravity irrigation. Approximately 460 acres of these lands are owned by the Ute Mountain Ute Indian Tribe.

The following is the irrigation water supply summary:

	Colorado avg.annual water supply (acre-feet)	land area (acres)	New Mexico avg. annual water supply (acre-feet)	land area (acres)
Full Service Lands				
Non-Indian	54,600	30,310	11,900	4,530
Southern Ute	3,300	1,800		
Ute Mountain Ute	25,600	11,600	800	380
Subtotal	83,500	43,710	12,700	4,910

Supplemental Service Lands				
Non-Indian	17,600	17,300	4,100	3,720
Ute Mountain Ute	200	460		
Subtotal	17,800	17,760	4,100	3,720
Total	101,300	61,470	16,800	8,630

In order to provide irrigation benefits to the area, the Federal Government, through the Bureau of Reclamation and this project, will be investing $5,808.00 per acre. This will go to land on approximately 400 existing farms.

The following table gives the projected crop distributions of each area or subarea of the project:

Projected crop distribution percentages

Area or subarea	Alfalfa	Small Grain	Corn	Dry Beans	Pasture
Thompson Park-Hesperus	85	4	2		9
Breen Subarea					
Supplemental Service	62	16	3	14	5
Full Service	56	21	1	20	2
Red Mesa Subarea					
Supplemental Service	62	16	3	14	5
Full Service	56	21	1	20	2
Dryside - Ute Mtn. Ute	56	21	1	20	2
State Line Subarea					
Supplemental Service	63	11	22	--	4
Full Service	64	13	22		1
South La Plata					
Supplemental Service	63	11	22		4
Full Service	64	23	22		1

The soils of the project area are generally low in organic content and are moderately to highly calcerous. In order to know what lands would be suitable for irrigation the Bureau of Reclamation has undertaken detailed land classification studies for land in the area. The classification of project lands was completed during the field season of 1972, 1974 and 1975 with the following results (see next page):

Project irrigable acreage
(Unit--acres)

	Colorado			New Mexico			
	Non-Indian	Indian	Subtotal	Non-Indian	Indian	Subtotal	Total
Supplemental service land							
Class 1	240		240	1,720		1,720	1,960
Class 2	16,500	190	16,690	1,860		1,860	18,550
Class 3	560	270	830	140		140	970
Subtotal	17,300	460	17,760	3,720		3,720	21,480
Full service land							
Class 1	640		640	3,320		3,320	3,960
Class 2	27,930	12,800	40,730	1,010	360	1,370	42,100
Class 3	1,740	600	2,340	200	20	220	2,560
Subtotal	30,310	13,400	43,710	4,530	380	4,910	48,620
Total	47,610	13,860	61,470	8,250	380	8,630	70,100

Land classification summary
(Unit--acres)

	Colorado			New Mexico			
	Non-Indian	Indian	Subtotal	Non-Indian	Indian	Subtotal	Total
Arable land							
Irrigated							
Class 1	240		240	1,950		1,950	2,190
Class 2	16,500	190	16,690	2,050		2,050	18,740
Class 3	560	270	830	150		150	980
Subtotal	17,300	460	17,760	4,150		4,150	21,910
Nonirrigated							
Class 1	640		640	3,710		3,710	4,350
Class 2	47,480	14,210	61,690	1,310	360	1,670	63,360
Class 3	4,020	750	4,770	240	20	260	5,030
Subtotal	52,140	14,960	67,100	5,260	380	5,640	72,740
Total arable .	69,440	15,420	84,860	9,410	380	9,790	94,650
Nonarable land							
Class 6	66,000	32,890	98,890	17,180		17,180	116,070
Class 6W	1,330	170	1,500	150		150	1,650
Rights-of-way	1,840	200	2,040	330		330	2,370
Total nonarable	69,170	33,260	102,430	17,660		17,660	120,090
Total project	138,610	48,680	187,290	27,070	380	27,450	214,740

Class 1 Arable Lands are highly suitable for irrigation farming and are capable of producing sustained and relatively high yields of a wide range of climatically adapted crops at reasonable cost.

Class 2 Arable lands are of moderate suitability for irrigation farming, being measurably lower than class 1 in productive capacity, adapted to somewhat narrower range of crops, more expensive to prepare for irrigation, and more costly to farm.

Class 3 Arable Lands are suitable for irrigation development but are approaching marginality for irrigation and are of restricted suitability because of more limiting deficiencies in the soil, topographic, or drainage characteristics than described for Class 2 lands.

Class 6 lands include those considered permanently non-arable because of their failure to meet the minimum requirements for an arable class. This helps explain the large federal investment per acre.

The benefit analysis that was conducted on the irrigation portion of the project was based upon levels of production and management expected 20 years after water is first delivered (emphasis added).

It has been assumed in the farm-budget analysis that in order to stay in the business of farming, a farmer would have to utilize the latest methods and technology, nearly optimal amounts of fertilizer and water would have to be applied, and hired labor would be kept at a minimum.

The Bureau indicated that the level of management presently found in the irrigated part of the project is considered as average or even slightly below when compared to national management levels in agriculture. Nevertheless, the above two assumptions were also included for the two Indian Tribes.

Payment for Irrigation

According to the Project Data Sheets the payment capacity per acre is $41.55: $40.00 for annual operation and maintenance costs and $1.55 for repayment of construction costs. The irrigators will pay an additional $5.45 for water, bringing their total repayment per acre to $47.00.

During the time the Farm Management Survey was conducted on the project (which provides the background for the irrigation repayment), the farm mortgage and loan situation was very good (late 1970's). Most of the farmers in the project area who had demonstrated their managerial ability and developed a positive credit rating, would have few problems with either short- or long-term financing, according to the Bureau.

In order to benefit from this project, farmers would be required to cover on-farm development costs to convert farmland to sprinkler-irrigated farms which would require a substantial amount of capital to purchase additional farm machinery, sprinkler irrigation equipment, fencing and buildings, and improvements. Lending institutions which were contacted at the time of the Survey, including commercial banks, Federal Land Banks, and the Farmers Home Administration, generally agreed that both short- and long-term financing could be obtained to meet these farm development needs.

The post-Survey experience of farmers at the neighboring Bureau of Reclamation Dolores project, however, has not confirmed this optimistic view. As part of the farm analysis for this project, the Dolores Demonstration Farm was used to project crop yields and other key information. (The same Demonstration Farm used for Animas La Plata.) Farmers in that area now find themselves in the position of bankruptcy if they have to take Bureau water and undertake the farm improvements necessary to use it.

Irrigation repayment would be divided into 13 blocks under the original project, with each block determined by availability of water, type of service, and geographical location. The blocks include six for non-Indian land in Colorado, two for non-Indian land in New Mexico, four for Indian land in Colorado, and one for Indian land in New Mexico. Repayment on each of the non-Indian blocks would start after the appropriate development period and would continue for 50 years for each block. (This may change under the new cost-sharing agreement that has been negotiated which may require 30-year repayment.)

The Animas La Plata Project was authorized as a participating project of the Colorado River Storage Project. Thus, net revenues of the Colorado River Storage Project storage units apportioned to Colorado and New Mexico may be used to repay that portion of the irrigation construction cost not paid from project sources.

Payments are scheduled so that costs assigned to each block would be repaid in 50 years following the end of the respective period. Irrigators would pay according to their ability and the available ad valorem tax would be used for repayment. The unpaid balance of each year's payment would be accumulated as an obligation of the Colorado River Storage Project revenues apportioned to each State for irrigation assistance.

Investment values of land by area and land class

Service area	Agricultural land value
Colorado	
Supplemental service	
Class 2	$400
Class 3	350
Benefit composite	375
Full service	
Dryside and Red Mesa	
Class 2	300
Class 3	250
Dry farm without project	275
Benefit composite	275
Grazing land	20
Indian full service	
Class 2	250
Benefit composite	250
New Mexico	
Supplemental service	
Class 1	425
Class 2	375
Class 3	325
Benefit composite	400
Full service	
Class 1	200
Class 2	150
Class 3	100
Benefit composite	175

Summary of farm budget data for determination of payment capacity

	Colorado					New Mexico		
	Supplemental service class 2 land		Full service class 2 land		Indian land	Supplemental service land3/		
	Without project	With project	Without project1/	With project	Full service class 2 with project2/	Without project	With project	Full service land with project2/3/
Farm size (irrigable acres)	660	290	820	290	290	280	280	275
Project water supply (acre-feet per acre)		1.18		1.80	2.2		1.1	2.64
Gross farm income	$52,103	$75,815	$37,264	$73,214	$73,214	$49,783	$76,136	$74,868
Less farm expense	57,520	53,581	42,699	50,780	50,055	41,276	52,864	48,779
Net farm income	-5,417	22,234	-5,435	22,434	23,159	8,507	23,272	26,089
Less return to labor, management, and equity		15,610		15,195	15,123	8,507	15,876	15,397
Payment capacity		6,624		7,239	8,037		7,396	10,692
Increase per acre due to project (rounded)		22.80		25.00	28.00		26.40	38.90
Increase per acre-foot (rounded)		19.40		13.90	12.60		24.00	14.70

1/ Represents dry farm conditions.
2/ Without project condition consists of dry grazing of negligible value.
3/ Composite of land classes 1 and 2.

Table 23
Buildings and improvements

Structure	Size or capacity	Projected cost	Useful life (years)	Annual repairs		Depreciation	
				Percent	Cost	Sinking fund factor (6 percent)	Annual cost
Dwelling	1,200 square feet	$25,575.00	50	0.02	$511.50	0.00477	$122.00
Domestic water system	250 feet x 5 inches	4,670.00	50	.015	70.00	.00477	22.00
Garage and machine shed	40 x 60	9,935.00	50	.02	198.70	.00477	47.00
Calf shed	40 x 80	10,035.00	20	.02	200.70	.03024	303.00
Calf pen (dairy)	per head	55.00	30	.02		.01505	.82
Cattle shed	per head	16.00	20	.02		.03024	.48
Utility shed	20 x 25	3,230.00	30	.02	64.60	.01505	49.00
Water trough (with pipe)		205.00	20	.02	4.10	.03024	6.00
Free-stall dairy shed	per head	185.00	40	.02		.00827	
Milking parlor	26 x 52	24,840.00	50	.02	496.80	.00477	118.00
Fences (cash-crop, feeder calf, and orchard)	3 rods/irrigated acre	16.00	20	.075	1.20	.03024	.48
Fences (cow-calf and dairy) (4-strand barb)	4.75 rods/irrigated acre	26.00	20	.075	1.95	.03024	.79
Fences (sheep)	4.75 rods/irrigated acre	33.00	20	.075	2.50	.03024	1.00
Fences (cattle nonirrigated) other	1.5 rods/nonirrigated acre	8.00	20	.075	.60	.03024	.24
Fences (sheep nonirrigated)	2.0 rods/nonirrigated acre	14.00	20	.075	1.00	.03024	.42
Sheep shed and paneling	100 head	980.00	50	.02	19.60	.00477	5.00
Sheep feeder	50 head	75.00	10	.03	2.25	.07950	6.00
Granary	1,030 bushels	1,010.00	30	.02	20.20	.01505	15.00
Granary	1,640 bushels	1,165.00	30	.02	23.30	.01505	17.50
Trench silo	300 ton	140.00	50	.02	2.80	.00477	.67
Concrete silo	300 ton	3,625.00	50	.02	72.50	.00477	17.00
Spray equipment (cattle)		320.00	15	.04	12.80	.04634	15.00
Cattle chute		710.00	30	.03	21.30	.01505	11.00
Calf chute		350.00	30	.03	10.50	.01505	5.00
Calf feeder	50 head	270.00	10	.03	8.10	.07950	21.00
Cattle corrals (includes chutes)	per head	12.40	20	.075	1.00	.03024	.37
Sheep corrals	per head	12.00	20	.075	.90	.03024	.37
Hay shed	45 x 128 x 20	9,200.00	50	.02	184.00	.00477	44.00

It is estimated that throughout the repayment period, revenues from the Colorado non-Indian irrigators and ad valorem tax would pay $22,238,000. Revenues from the New Mexico non-Indian irrigators and ad valorem tax would pay $6,020,000. Irrigators would also pay all of the operation, maintenance, and replacement costs allocated to irrigation. Including the estimated capitalized value of the operation, maintenance, and replacement costs, approximately 26% of the total cost allocated to Colorado non-Indian irrigation and 33% of the costs allocated to New Mexico non-Indian irrigation would be repaid from local sources.

Colorado River Development funds of $654,090 and contributed funds of $254,000 from the Bureau of Indian Affairs, State of Colorado, city of Durango, La Plata County, Colorado, La Plata Water Conservancy District, Southwest Water Conservation District, State of New Mexico, and Southern Ute Tribe totaling $908,000 have been credited to the Animas La Plata Project for repayment.

Irrigation was credited $634,000 and the remaining $274,000 was credited to municipal and industrial water. The $654,000 from the Colorado River Development Fund would be distributed among States and Indians in proportion to costs allocated to each. The contributed funds have been assigned to those entities represented by the contributors.

An Indian repayment of $4,565,000 would be deferred under the Leavitt Act as long as the lands remain in tribal ownership. The remaining $202,250,000 of the irrigation obligation would be paid from revenues in the Colorado River Basin Fund apportioned to Colorado and New Mexico with $179,972,000 coming from Colorado's share and $22,278,000 from New Mexico's share.

The payment of Indian irrigation costs is based on charges for purchase of water, estimated at $383,300 annually in 1979. Approximately $292,000 ('79 figures) of this amount would be required for the Indians' share of the annual operation, maintenance, and replacement costs. The remainder of $91,300 ('79 figures) annually or $4,565,000 ('79 figures) over a 50-year period would be deferred under the Leavitt Act of July 1, 1932 as long as the lands remained in Indian ownership.

The Conservancy Districts would make payments toward project irrigation costs from three sources: (1) water charges from the irrigators, (2) account charges from the farm unit operators who received project water, and (3) ad valorem tax revenues. The following table shows these costs from 1979, as contained in the Definite Plan Report (see next page):

Irrigation payout summary
(Unit—$1,000)

		La Plata Water Conservancy District—Colorado					La Plata Conservancy District—New Mexico					Indians									
Year of study	Fiscal year	Water users	Ad valorem tax	CRDF 2/ and contributions	CRSP 3/ revenues	Subtotal	Water users	Ad valorem tax	CRDF 2/ and contributions	CRSP 3/ revenues	Subtotal	Water users (deferred) 1/	CRDF 2/ and contributions	CRSP 3/ revenues	Subtotal	Total payout excluding Indian deferral	Unpaid balance	Allowable unpaid balance	Plant in service	Fiscal year	Year of study
0																		26,910.0	26,910.0		0
1	1988		62.2	342.0		404.2			65.0		65.0		207.0		207.0	676.2	[illegible]	140,927.0	140,927.0	1988	1
2	1989	7.1	44.8			51.9						0.7			.7	51.9	[illegible]	235,907.0	235,907.0	1989	2
3	1990	7.1	47.5			54.6		.5			.5					55.1	[illegible]			1990	3
4	1991	9.1	50.3			59.6		.5			.5					60.1	[illegible]			1991	4
5	1992	81.2	62.8			144.0		.7			.7					144.7	[illegible]			1992	5
6	1993	120.8				183.6	43.4				44.1	.7			.7	227.7	[illegible]			1993	6
7	1994	224.2				287.0	43.4				44.1	3.1			3.1	331.1	[illegible]			1994	7
8	1995	298.1				360.9	118.4				119.1	12.2			12.2	480.0	[illegible]			1995	8
9	1996											91.3			91.3		[illegible]			1996	9
10	1997																[illegible]			1997	10
11	1998																[illegible]			1998	11
12	1999																[illegible]			1999	12
13	2000																231,520.7			2000	13
14	2001		67.0			320.9		.7			119.1					440.0	231,080.2			2001	14
15	2002		91.0			345.1		1.0			119.4					479.5	230,600.7			2002	15
16	2003																230,130.2			2003	16
17	2004																229,660.7			2004	17
18	2005																229,190.2			2005	18
19	2006																228,727.7			2006	19
20	2007																228,257.2			2007	20
21	2008																227,786.7			2008	21
22	2009																227,316.2			2009	22
23	2010										119.6					630.5	226,845.7			2010	23
24	2011		91.0			391.1		1.0		1,137.0	1,256.6					1,607.5	225,238.2			2011	24
25	2012		137.6			395.7		1.5		5,738.0	5,857.0					6,253.6	218,984.6			2012	25
26	2013									5,666.0	5,785.0					6,181.6	212,803.0			2013	26
27	2014									5,102.0	5,221.0					5,617.6	207,185.4			2014	27
28	2015									3,720.0	3,839.0				91.3	4,235.6	202,949.8			2015	28
29	2016									62.0	181.0			853.0	944.3	1,430.6	201,519.2			2016	29
30	2017										119.9				91.3	515.6	201,003.6			2017	30
31	2018																200,487.0			2018	31
32	2019																199,972.6			2019	32
33	2020					395.7										519.6	199,456.0			2020	33
34	2021		137.6		1,536.0	1,831.7		1.5			119.0					2,091.6	197,405.2			2021	34
35	2022		203.7		15,193.0	15,816.8		2.2			120.6					15,935.6	181,469.8			2022	35
36	2023				15,171.0	15,586.8										15,705.6	165,764.4			2023	36
37	2024				13,160.0	13,630.8										13,751.6	152,013.0			2024	37
38	2025				13,750.0	14,231.8										14,332.6	137,680.6			2025	38
39	2026				13,974.0	14,435.8										14,556.6	123,124.2			2026	39
40	2027				14,077.0	14,433.8										14,554.6	107,300.0			2027	40
41	2028				14,065.0	14,536.8										14,647.6	92,923.6			2028	41
42	2029				13,172.0	13,653.8									91.3	13,956.6	78,968.8			2029	42
43	2030				15,403.0	15,886.8									91.3	15,985.6	62,987.6			2030	43
44	2031		201.7		799.0	1,280.0		2.2			120.6			13,906.0	13,997.3	15,207.6	47,695.2			2031	44
45	2032		321.3			575.4		3.0			121.4			15,224.0	15,315.3	15,926.0	31,770.6			2032	45
46	2033							3.5			121.9			16,027.0	16,018.3	15,470.3	16,142.1			2033	46
47	2034													4,390.0	4,490.3	5,100.3	11,061.8			2034	47
48	2035														91.3	789.3	10,268.5			2035	48
49	2036																9,679.2			2036	49
50	2037																9,017.9	235,907.0		2037	50
51	2038	298.1				575.4						91.3			91.3	789.3	8,236.6	232,161.0		2038	51
52	2039	251.0				572.3						98.6			98.6	694.2	7,562.4	212,161.0		2039	52
53	2040	251.0				572.3										694.2	6,868.2	210,097.0		2040	53
54	2041	240.0	321.3			570.1										692.0	6,136.2	180,777.0		2041	54
55	2042	176.0	321.4			498.3	118.6				121.9					620.2	5,536.0	154,836.0		2042	55
56	2043	117.1	321.4			438.1	75.0				78.5					517.2	4,948.8	97,019.0		2043	56
57	2044	11.0	321.4			333.1	75.0	3.5			78.5	98.6			98.6	411.8	4,565.0	57,101.0		2044	57
58	2045											88.0			88.0		4,565.0	67,250.0		2045	58
59	2046											79.1			79.1		4,565.0	4,565.0	235,907.0	2046	59
Total		17,006.8	5,111.0	342.0	[illegible]	[illegible]	5,676.0	108.0	65.0	21,425.0	27,318.0	2,565.0	207.0	50,400.0	55,081.0	231,147.0	[illegible]		235,907.0		Total

1/ Repayment deferred pursuant to the Leavitt Act as long as land remains in Indian ownership.
2/ Colorado River Development Fund.
3/ [illegible]

Difficulties of Irrigation

About 21,480 acres in the project area are presently irrigated, all from the La Plata River and its tributaries. The principal crops grown in the presently irrigated portions of the project area in Colorado are: wheat, 24 percent; alfalfa, 19 percent; and barley, 7 percent. According to project documents, crop yields are low, diversity is restricted, and crop failures often occur.

In the presently irrigated sections of the project area in New Mexico, alfalfa is the main cash crop, accounting for 58 percent of total irrigated crops. Other primary crops are: barley, 12 percent; corn silage 7 percent; oats, 3 percent; and wheat, 3 percent. About 83 percent of the irrigated land is used for crops and 17 percent for pasture or farmstead. Grazing accounts for essentially all dryland use of the project area in New Mexico.

In relation to full supply of water needed for irrigation, the average annual shortage of water on presently irrigated land is estimated to be 52% on farms in the New Mexico portion of the project area, 49% in the northern part of Colorado lands, and 76% in the remainder of the Colorado portion. It should be noted that there will still be irrigation water shortages during and after the completion of the project.

The lands in the Red Mesa and State line areas that have an average annual shortage of 65% without the project will have theirs decreased to 2.6%. The Thompson Park-Hesperus areas that have a 49% shortage will be reduced to 32% in Colorado and 2.5% in New Mexico. Shortages on full service lands under project conditions for both Colorado and New Mexico would average about 3%.

About 52 percent of the irrigated acreage is used for crops, 30 percent is used for pasture, and 16 percent is idle or fallow. The main dryland crop in the Colorado portion of the project is pinto beans, which make up 60 percent of total dryland crop distribution; wheat accounts for 25 percent and 15 percent of the land is idle or fallow.

Project irrigation water would be provided to approximately 400 existing farms in private ownership and to the two Ute Indian Tribes. All of the on-farm improvements (sprinkler systems, etc.) are to be the responsibility of the landowners, Indian and non-Indian.

There is essentially no irrigated cropland on the Ute Mountain Ute Reservation, but the tribe and individual Indians graze cattle on the sparsely vegetated areas.

Without irrigation, sparse grassland and shrubland on the Ute Mountain Ute Reservation is suitable only for a small amount of cattle grazing.

According to the EIS, the Indian full service land would require extensive clearing, field layouts, selective fencing and access roads before irrigated agriculture could occur. According to the Definite Plan Report, the Ute Mountain Ute Tribe has plans to irrigate about 7,500 acres of land west of the project area as a result of the Bureau of Reclamation's Dolores project, which is now under construction.

In order to deliver the water for irrigation, lateral systems with 197.9 miles of buried pipe would be constructed for the project (this was before the project was divided into Phase I and II) in order to deliver the water to project lands. This pipe would either be asbestos cement or reinforced concrete.

Since the original documents were prepared on the project, the U.S. Congress has passed the 1982 Reclamation Reform Act, which changes the acreage limitations on project beneficiaries who plan on receiving Federal irrigation water. In the absence of a new analysis of the project area, it is difficult to ascertain how this will affect agricultural interests in the project area.

Under the plans of the project authorization, water was to be delivered to privately owned farms of 175 to 198 acres in single ownership and 350 to 395 acres in joint ownership. At the present time, between 82 and 92 owners have land in excess of the limits for single ownership, and 51 of the owners also have land in excess of the limits for joint ownership before the 1982 changes in law . A total of about 10,350 acres, or 15 percent of the privately owned project land, is in excess ownership. The owners of these lands would have to dispose of the excess acreage before receiving project water or sign contracts with the United States agreeing to dispose of the land within 10 years after receiving project water, or they could retain their excess land and not receive project water for the excess land.

In addition, it is impossible to report exactly how many of these farmers have participated in the set aside programs of the 1985 Food Security Act. The Soil Conservation Service has to go through the lengthy process of determining the farmers that qualify. A source from the SCS expects that at least 75% of the farmers from that area will qualify for the farm subsidies from this program of the Department of Agriculture.

In counties neighboring the project area such as Montezuma County, farmers have enrolled 9,624 acres into the program and want to add 17,123 acres. In another neighboring county, Dolores, 20,301 acres are currently enrolled with plans to add another 5,824 acres.

Within the project area an increasing number of farmers are finding it advantageous to explore different avenues of employment. The high cost of farming and its low returns, oversupplied markets, and relative low economic benefits vis-a-vis other sectors of the economy have all contributed to farmers leaving the industry. Indeed, project documents reveal that 1 of 16 families received direct income from farming in the project area and that the total value of production on land to receive project water was $3.2 million in 1978. With respect to Indian farming, there were 17 full-time farms and ranches and 24 part-time operations on the Southern Ute Reservation in 1975. In light of the relatively light agricultural activity, the Project's emphasis on irrigation seems disproportionatley large.

The base of operations on the Ute Mountain Ute Reservation is a bit different. The 51 Tribe-subsidized cattle operations represented the main agricultural activity. Insufficient irrigation water has hindered agricultural development.

That the land has not been put to agricultural use is not entirely surprising. Given the high altitude and the short growing seasons, much of the land will not meet prime or unique farmland status, according to agricultural officials. Further, these agricultural lands have in the past been sprayed with the parathion insecticide and the 2-4-D herbicide, which have been linked to an increase in cancer in farmers. The EIS reports that, "the use of chemicals that does occur (in the project area) are consistent with a growing trend nationally to use pesticides that are more toxic. The herbicides are used along irrigation ditches, drains and canals for weed control. Since return flows from project lands receiving irrigation water from the project are in some instances going back into project reservoirs further information is needed to determine the likely effects on reservoir water quality and fish and wildlife.

MUNICIPAL AND INDUSTRIAL WATER SUPPLY

Project Goals and Requests

The climate of the project area is characteristic of the southwest-- low precipitation and humidity and abundant sunshine. Precipitation is generally influenced by the prevailing southwesterly winds and elevation differences.

Consequently, average annual precipitation ranges from about 9 inches at lower elevations in the southernmost part of the project area to about 18 inches at higher elevations in the northern part. The least precipitation usually occurs in June and the greatest from July through October. Average May through September precipitation ranges from about 4.1 inches in the La Plata area of New Mexico to 7.6 at Hesperus, Colorado.

The project is to supply 47,600 acre-feet of water for non-Indian municipal and industrial users and 32,500 acre-feet for the Indians. Water users would be responsible for the conveyance, treatment, and distribution of their respective water supplies. Project documents give no indication of what these costs will be.

According to the Definite Plan Report:

> The amount of water available for project use is the portion of the preproject flows of the Animas and La Plata Rivers at the Durango Pumping Plant and Southern Ute Diversion Dam, respectively, in excess of the amount required to satisfy water rights senior to project rights or to maintain selected minimum river flows. During the 49-year period 1929 through 1977, the average annual preproject flows of the Animas and La Plata Rivers at the indicated locations were 542,300 acre-feet and 26,400 acre-feet, respectively, and non-project water for rights senior to the project rights or to satisfy selected bypass requirements average 78,600 acre-feet and 7,200 acre-feet, respectively. The supply available for project use, therefore, is 463,700 acre-feet from the Animas River and 19,200 acre-feet from the La Plata River, or a total of 482,900 acre-feet annually.

The Animas River will have its average annual flow depleted by 131,200 acre-feet at the state line and up to 161,400 acre-feet at the confluence of the San Juan. The La Plata river will be depleted by 12,400 acre-feet.

The M&I water supplies are committed to meeting projected needs of the project area until approximately 2010 in New Mexico and 2020 in Colorado. Some of this supply would be used when available, the remainder would be used as the need developed. (It is possible that these time periods could slide ten years given the delay in project construction. The absence of new information, given the Phase I - Phase II approach for the project, makes this speculative.)

81,100 acre-feet of water from the project have been requested for municipal and industrial use. The state of Colorado portion would be 41,700 a/f and New Mexico interests would receive 38,400 a/f.

In Colorado, the following parties have indicated an interest in municipal and industrial water:

8,200 a/f	Durango
1,000 a/f	LaPlata Service Area
6,000 a/f	Ute Mountain Ute Tribe
26,000 a/f	Southern Ute Tribe
41,700 a/f	

In New Mexico, the following parties have indicated an interest in municipal and industrial water:

19,700 a/f	Farmington
7,600 a/f	Navajo Tribal Utility Authority
5,800 a/f	Aztec
5,300 a/f	Bloomfield
38,400 a/f	

It is estimated in project documents that none of the M&I water for the two tribes will be needed prior to the year 2000 which marks the end of the 10-year deferral period (This had assumed that the project would begin construction in 1980 and be completed in 1990. It may be assumed that this deferral period should now be 2010.)

In addition, the project documents indicate that the Indians need to repay annual operation, maintenance, and replacement costs for M&I water. In addition, the 6,000 a/f of M&I water developed for the Ute Mountain Ute Tribe, the 26,500 a/f for the Southern Ute Tribe and the 7,600 a/f for the Navajo Tribe are the result of written requests from the respective Tribal Councils, and it was assumed that payment capability existed when the project was formulated.

The Southern Ute Tribe requests M&I water needed to permit development of coal reserves located on the reservation. The Southern Utes have asked for 26,500 a/f of water for the development of coal resources plus 3,300 a/f of water to irrigate 1,800 acres of land.

The Ute Mountain Ute Tribe also seeks water for developing coal on the east side of its reservation. The Tribe has requested 6,000 a/f of water for coal development, as well as for the proposed Mancos Canyon Park, and a Urea Production Plant. They have also requested 26,200 a/f to irrigate 12,440 acres.

The Navajo Tribal Utility Authority in New Mexico has requested 7,600 a/f for its growing needs.

Population Projections

After 1970, a new period of population growth began, attributable primarily to renewed exploration for oil, gas, and coal in New Mexico and to the appeal of the entire area to those seeking to live in rural and scenic surroundings.

Estimated water requirements of the project area increase from 6,700 acre-feet per year in 1980 to about 59,200 acre feet per year in 2020. The need for new industrial supplies is estimated at 32,500 acre feet per year by 2020. (Definite Plan Report pg. 18) These estimates are based on continuous population growth.

Population projections are crucial to water planning studies, because all future water demands are based on those projections. If the population projections are high, the examination of project alternatives will be skewed because the alternatives will appear unable to meet the high demand. In addition, the elevated costs of the project end up being borne by a smaller population. If the population projections are low, the facility will rapidly become inadequate and will need to be expanded sooner than expected.

The Bureau of Reclamation's projected population growth rates for the Colorado portion of the project are 3.4 percent annually to 1990 (the growth rate of the city of Durango in the late 1970's) and 1.9 percent annually from 2000 to 2020. The Colorado portion of the project is expected to have a population of about 53,000 by the year 2020, or nearly three times the estimated 1976 population of 18,000.

In the New Mexico portion of the project area, population projections to 1985 were based on the late 1970's San Juan County annual growth rate of 5.7; the historic county growth rate of 3.6 percent annually was applied to years from 1985 to 2000, and the current State growth rate of 2.4 percent to the years 2001 - 2020. Thus the population of the New Mexico portion of the area is expected to approximate 267,000 by the year 2020, about 4.6 times the estimated 1976 population of 57,550.

These projections are based on data provided by the state, county, and local governments and planning offices and various consulting engineer's reports.

PROJECTED POPULATION
Animas - La Plata Project Area
United States Bureau of Reclamation

	1970	1980	1990	2000	2010	2020
CO	18,000	20,600	28,700	36,400	44,000	53,000
NM	75,550	94,600	145,200	202,400	254,300	319,700

PROJECTED POPULATION
Animas - La Plata Project Area
Census Bureau

	1970	1980	1990	1995	2000	2005
CO	19,199	27,201	34,000	37,000	40,000	47,000
NM	52,517	81,433	99,500	112,800	128,000	142,800

Concern that the U.S. Bureau of Reclamation's population projections were inaccurately high has prompted Durango's Animas Regional Planning Committee to make its own assessment.

PROJECTED POPULATION FOR PROJECT SERVICE AREA IN DURANGO BY AGENCY

	USBR	ARPC	CEN.BUR
1980	17,952	15,134	12,274
1990	24,338	20,737	
2000	32,202	28,415	
2010	38,675	------	
2020	48,337	------	

The growth rates used by the USBR and the ARPC are very similar. The main difference is that the ARPC started at a lower population base as determined by the 1980 Census Bureau. These are also very large and rapid increases in population for the city and its service area, considering past growth and the land area actually suitable for development.

According to an analysis that was undertaken by Black and Veatch for the City of Durango serious doubt is raised on the population figures used by the Bureau of Reclamation to substantiate future water needs. With respect to the Bureau's figures Black and Veatch state:

> Based upon demography performed by the U.S. Bureau of Reclamation and the Animas Regional Planning Commission and starting with the 1980 U.S. Census Bureau figures, the population to be served by the Durango Water Utility will grow to an estimated 21,420 by 1990; 32,600 by 2005; and 45,520 by 2020. This is a very large and rapid increase in population for Durango and its service area, considering its past growth and the land area actually suitable for development. A more realistic future growth projection may only result in a population near 20,000 by 1990, 24,700 by 2005 and 29,300 by 2020 (emphasis added).

According to project documents, the Indian population in the project area (1979 figures) is as follows:

Southern Utes	870
Ute Mountain Utes	1,325
Navajos	6,530
Total	8,725

Projected Water Usage

The USBR should place more emphasis on estimates of the study area's future water needs and reasonable means of satisfying those needs. Conservation measures appear to have great potential for obtaining maximum benefits from present supplies and reducing future storage and treatment needs. This is particularly evident in the case of Durango and Farmington, whose daily per capita use rates are extremely high. The USBR has undertaken no real consideration of water conservation in its EIS, thus giving no consideration to the least cost alternative.

The USBR estimated average per capita daily water use at 220 gallons per capita daily (gpcd) adjusted for the tourist and student populations. This projection appears to be in error. In arriving at the adjusted figure of 220 gpcd , it appears that no adjustments were made to account for the fact that tourists and students use less water on a per capita basis than permanent residents. Since day-use visitors may use 25 to 40 gallons per capita per day and seasonal visitors can be expected to use approximately 35-60 gallons per capita per day it appears that much less of the EIS's 280 gpcd for Durango's consumption can be attributed to the demands of tourists and students.

According to project documents, using the estimate given above, average use by students would range between 77,000 and 132,000 gallons per day, and water use by tourist would range between 75,000 and 125,000 gallons per day. Thus, instead of being the 220 gpcd used in the USBR's estimates, the average per capita adjusted rate is probably more on the order of 266 to 271 gallons per day. This extremely high water use rate points directly to the need to consider water conservation as a means of postponing or avoiding the costs of facilities to store and treat large quantities of additional water.

The development of the M&I water supply would occur by pumping water from the Animas river to the Ridges Basin Reservoir which would take place primarily during the Spring. The flows of the river in the winter would be 125 c.f.s and in the Summer 225 c.f.s. (the minimum flow necessary for the river's ecosystem and appearance according to the Bureau).

The Ridges Basin Reservoir would be at its maximum water level in May of each year but would only be at such a level in 19 of 49 years. Maximum drawdown for the reservoir would be in July and August by 22 feet annually (8% of maximum depth as measured at the dam). From April to September the surface area of the reservoir would be decreased from 2,160 acres to 1,950 acres. Poor water years or drought (which occur statistically in 26 of 49 years) would reduce this area even more.

The Ridges Basin Reservoir is expected to lose 3,300 acre-feet of water annually to evaporation and the Southern Ute Reservoir (if constructed) would lose 3,200 acre-feet.

The city of Durango obtains its raw water supply from both the Florida and Animas Rivers according to project documents. The city has an absolute direct flow right of 8.92 cfs from the Florida River and 6 cfs from the Animas River, plus a conditional direct flow right from the Animas River of 44 cfs. The city also has storage rights for four reservoirs totaling 3,272.5 acre-feet. The Durango City Pipeline diverts water from the Florida River about 10 miles east of the city and has a capacity of 10.1 cfs. The pipeline delivers water to the Durango Reservoir No. 2 (Terminal Reservoir). The reservoir has an active capacity of 129.5 acre-feet.

The Animas Pump and Force Main consists of a pumping plant on the Animas River and a 1.3 mile pipeline leading to the Terminal Reservoir. These facilities have a capacity of about 9.25 cfs to the reservoir and 1.01 cfs to the Municipal Golf Course and Fort Lewis College for irrigation.

Two other pumping plants on the Animas River provide raw water for irrigation of the Green Mountain Cemetery and Durango High School grounds. Each of these plants has a capacity of 1.33 cfs.

The city of Durango is to receive 8,200 acre-feet of municipal and industrial water from the reservoir annually. Durango presently diverts water for M&I use from the Florida River immediately downstream of Lemon Dam and pipes it to a reservoir immediately east of the city for treatment, storage and distribution. During high demands, additional water is pumped into the reservoir from the Animas River. Durango accounts for 95% of the M&I demand in the area.

Under the original project plans, the rural water users and the Ute Mountain Utes would need to provide secondary storage for municipal and industrial water delivered through the Dryside Canal because the canal could have freezing and maintenance problems during the Winter months. Hence, pumping in the canal will only occur from April through October. Water is available from the Dry Side Canal (for M&I) April, May, August, September, and October. Water is not available June and July because the capacity of the Dry Side Canal is used for irrigation water.

Most rural users either rely on private wells or because of problems such as undependable supplies or poor quality, haul their water for domestic consumption. An example of the rural water users' needs can be seen near Marvel, Colorado where 1,500 people haul their water from a spring nearby. Under the phased construction of the project it is unclear how these needs are going to be met.

Under the original plans, the La Plata Diversion Dam would be 7.5 acres in size and 8.5 feet deep.

The size of the Southern Ute Diversion Dam would be 17 acres and 9.5 feet deep.

The plans discussed in the EIS for the Southern Ute Dam call for a reservoir which is 2.6 miles long with 70,000 acre-feet capacity (40,000 active which provides 1,386 surface area and 30,000 dead storage which provides 821 surface acres. There would be 37 surface additional acres at the top of dead storage and 1421 acres at the top of surcharge. 10 miles of fence around the reservoir will be required for management purposes.

There is considerable disagreement over the water use figures for the local area. Supposedly conservation measures such as metering, raising rates, and restricting lawn watering have been instituted in the communities. Through the incorporation of such measures, the Bureau of Reclamation has used a 20% reduction in the per capita consumption figures - dropping use from 280 down to 220 to reflect the conservation assertedly taking place in the area.

The city of Durango has a right of use of 5,600 acre-feet of water from the Florida River. They also have rights on the Animas River to be developed by the project. Durango's planned use is:

500	acre-feet	1980
3,900	acre-feet	2000
8,200	acre-feet	2020

Single Purpose Alternative

It is worth noting that when the Bureau of Reclamation evaluated a municipal and industrial alternative for the project, that instead of using the 3 and 1/4% 100-year period that the Animas La Plata project was evaluated at, that a 7% interest rate over 50-year period was used. The project documents never indicate that a single purpose M&I alternative was not economically feasible.

FISH AND WILDLIFE

15,139 acres of land would be required for project features. The ownership of this land is as follows:

7,539	acres of private land
4,296	acres of State of Colorado and New Mexico
2,505	acres of Tribal land
799	acres of Federal land

According to the project's EIS, a total of about 13,684 acres of land now committed to wildlife habitat would be acquired for project use. 4,183 acres of this would be irrevocably committed to reservoir storage, canals, roads, and other structures. The remaining 9,501 acres would be committed to such long term project uses as recreation areas, wildlife management areas and rights of way.

Construction of the Ridges Basin Reservoir would require the relocation of a large big game management area. Only 4,000 of the area's existing 7,000 acres will be replaced. It is unknown where this replacement land will be located. Project documents indicate that about 1,600 acres could be found north of U.S. Highway 160 and 900 acres west of Ridges Basin with an additional 1,000 acres within the Boundary of the Southern Ute Reservation. The remaining 500 acres has not been identified.

2,500 acres of the 7,000 acres of land would be lost permanently to the building of the Ridges Basin Reservoir and other project features. In exchange, there will be acquired 1,600 acres of oakbrush vegetation and 900 acres of pinyon juniper. The area will be chained, seeded and have management practices instituted specifically for wildlife according to project documents.

At the Southern Ute Reservoir, 1,400 acres of habitat will be inundated. In exchange, about 1,000 acres of land will be obtained within the proposed land acquisition boundary on the Reservation and be developed and managed for wildlife.

The EIS on the project had this to say about the impacts on habitat:

> The overall condition for wildlife will be that of continuous reduction in habitat, - caused by the continuing development of more area for housing and other needs of the increased population.
>
> This reduction in habitat affects all species of wildlife in some way or another; it is eliminating food resources as well as cover for many species. As more and more development occurs, the animals now in the project area are being forced to occupy less desirable habitat and to over-populate certain areas.

The wildlife population is made up of the following:

Mule Deer	1,000	area residents (CO)
	4,000	migratory (CO)
	380	area residents (NM)
	200	area residents Ridges Basin (CO)
Elk	200	residents
	2,000	migratory
	200	winter at Ridges Basin

The project area also contains the endangered species of bald eagles, peregrine falcons and Colorado River squawfish.

The bald eagles nest next to the project area in Ridges Basin part of the area being considered for recreational development. The Bureau of Reclamation is supposed to develop a Bald Eagle Management Plan for the two reservoirs.

The mule deer will lose 4,700 acres of habitat which is to be replaced with 2,500 acres of purchased land. The elk will lose 2,230 acres of winter range by the construction of the Ridges Basin Reservoir. The land adjacent to the reservoir is in poor condition and not capable of supporting this increase in the number of animals, therefore according to the EIS "mortality will occur".

The game fishing in the Animas river is severely limited because of a combination of poor water quality and seasonal flow fluctuations. Rainbow and brown trout are intensively stocked in the river.

According to the DPR:

> the section of the Animas River about 15 miles above Durango down to the city has a good stocked year-round trout fishery with an adequate aquatic insect population for fish production; however, the poor stream habitat, the transition from cold water to warm water, the large flow fluctuations, and some residual toxicity from heavy metals contribute to the low diversity indices found in the aquatic community.
>
> Furthermore, the high concentrations of iron, manganese, copper, zinc, cadmium, molybdenum, cyanide, mercury, and silver at Durango are a direct result of the metals contributed to the stream in its headwaters. Metal concentrations vary throughout the year, possibly with upstream activity or flows, although no reliable correlations can be found.

According to project documents there will be minimum bypass flows at the Durango Pumping Plant for the maintenance of fisheries in the Animas River of 225 cfs from April 1 through September 30, except when river flows fall below this level due to naturally low runoff and nonproject diversions. A minimum bypass of 125 cfs would be provided during the remaining months. This translates into an average annual volume of water on the order of 24,700 acre-feet.

The Ridges Basin Reservoir and the Southern Ute Reservoirs will be stocked with fry-fingerling size trout so that flat-water fishing can take place.

CULTURAL RESOURCES

There are over 3500 sites of archeological material in the project area. Many of these sites are attributable to the Anasazi Society. There will be a 7-year, 175-site sample inventory of such material undertaken with minimal data recovery from 1,000 sites to obtain information on settlement patterns.

Because of the large number of sites, an adequate cultural resource recovery program will require as much as 4% of the project's budget, well above the 1% ceiling mandated by federal law for mitigation costs. According to the Definite Plan Report for the project, the Bureau of Reclamation will be seeking Congressional authorization to exceed existing limitations on the expenditures of nonreimbursable project funds to mitigate loss and enhance cultural resources.

The cultural resources survey undertaken in 1975 for the project area identified 46 prehistoric sites and 10 historic sites that would be affected by the construction of the project. The limited evidence available suggests that the historic sites were not eligible for inclusion in the Register at the time of the survey.

Under original project plans, the Bureau of Reclamation was contemplating a visitor center to display and interpret Anasazi Tradition.

The portion of the project area within the Ute Mountain Ute Indian Reservation is currently listed in the National Register of Historic places as part of the Ute Mountain Ute Mancos Canyon Historic District. It is unclear what impact the construction of the project will have on that designation.

It is worth noting that the Mesa Verde National Park is very nearby (ten miles east of Cortez, Colorado) and could possibly be impacted by any planned energy development since it is a Class I air quality region. National Monuments at Natural Bridges, Arches, Canyon de Chelly, Hovenweep, Yucca House, and Aztec Ruins are also within a radius of about 100 miles of the project area.

RECREATION AND TOURISM

The climate of the area is suitable for year-round recreation and tourism. The winter provides plenty of snow and abundant sunshine, bringing people from all over the world to the ski areas of Purgatory and Telluride. The summers are warm but not unbearable, with low humidity and temperatures rarely exceeding 100 degrees. The summer provides hikers, bikers, white water rafters,and golfers a great opportunity to enjoy recreation in a bearable climate.

The mountains of the area offer a wide variety of recreational opportunities ranging from hunting, fishing, hiking, white water rafting, camping, skiing, and biking.

The San Juan National Forest north of the project area is the primary attraction for visitors. This area has enjoyed 1.8 million visitor days with an average stay of one an one-half days.

At the Ridges Basin and Southern Ute Reservoirs a total of 2,720 people could be accommodated at one time for camping, fishing, boating, picnicking and sight-seeing for a total of 307,500 recreation days a year in the project area.

The 1,800 visitors per day at the Ridges Basin Reservoir would have:

574	parking spaces
10	miles of hiking trails
54	camping units
48	picnic units
34	boat slips
7	lane boat ramp

The 920 visitors per day at the Southern Ute Reservoir would have:

274	parking spaces
76	camping units
16	picnic units
19	boat slips
4	lane boat ramp

The Definite Plan Report indicates that some recreation at Ridges Basin and some whitewater boating in the Animas River below Durango would be lost as a result of the project. Because of the flow changes in the Animas River, 3,400 recreation days would be lost and 15,200 recreation days reduced (hiking, sight-seeing on Animas River, recreation floating and kyaking and commercial river floating) by the operation of the project.

The USBR estimates that 5% of the area's rafting revenues will be lost due to project development. The USBR has estimated that the losses of boating opportunities anticipated with project development, can be evaluated at rates of $4 to $9.50 for each recreation day depending on the types of boating and the river flow at the time of the boating experience.

The report of the President's Commission on Americans Outdoors states that the demand for white water river recreation is increasing while the resource of white water is shrinking. Recreational use of Colorado's rivers more than doubled in the last ten years, from 142,000 use days in

1976 to more than 350,000 in 1985. Two of Colorado's prized boating rivers, the Gunnison and the Dolores, have had white water recreation opportunities eliminated or greatly diminished by federally funded water projects which have directly inundated canyons or reduced river flows to the point where floating is no longer possible. This will happen to the Animas if this project is constructed.

WATER QUALITY

The project is not expected to produce any water quality improvement. Moreover, the EIS is deficient in its discussion of the project's ability to meet water quality standards. The only discussion of this subject appears on page C-24 where the EIS refers to the Bureau's commitment to meeting water quality standards in the Animas river during construction of the project. The EIS contains no further information specifically related to the ability of the project to meet water quality standards. The EIS should describe the impacts of the project in relation to the numerical standards from the state's stream classification and anticipated classification of the water quality in reservoirs.

The question of drinking water standards is also important in this respect. The city of Durango's water would be made available from the Ridges Basin Reservoir Inlet Conduit to the city's treatment plant. In order to receive the water, a settling basin will be constructed to remove 6,300 cubic yards of sediment a year. This sediment will have to be hauled away periodically.

For the water users in the Breen, Colorado area, a water treatment plant will need to be constructed to use project water. The same will hold true for the rural water users and the Ute Mountain Utes receiving water through the Dryside Canal.

Wastewater Effluent

The Durango wastewater treatment plant produces an effluent. This treated effluent is presently discharged into the Animas River a short distance upstream of the Project's Durango pumping plant. The Durango pumping plant would therefore receive river waters containing treated wastewater for discharge into Ridges Basin Reservoir. Since Project waters from the Reservoir or the Durango Pumping Plant will be utilized as a raw water source for drinking water, it would be advisable as part of the Project to convey the effluent from the wastewater treatment plant to a point downstream of the Durango Pumping Plant. The Bureau has recently indicated that this change would take place.

Uranium Mill Tailings

The tailings pile from the abandoned uranium mill adjacent to the Animas River is also upstream of the Durango Pumping Plant. As part of the project, the effect of these tailings, including any runoff or seepage from the tailings, on the quality of the river waters should be thoroughly investigated. Alternatives to the Durango pumping plant and/or a different sites for the pumping plant should be explored.

The USBR has given at least brief consideration to the ramifications of these hazardous problems:

> "The present pumping plant and settling basin site is located on a bench west of an existing county road and the location of the new Colorado State Highway 160-550 route. The bench was used as a disposal area for waste solutions from a vanadium-uranium mill and contains radioactive materials. The present owner of the tract, Ranchers' Exploration and Development Corporation, was planning to remove this material and two large piles located upstream to another location for processing of recoverable materials; however, the corporation has withdrawn its license application and has no plans to move the materials. If the material and the accompanying hazards would not be removed by the beginning of construction, an alternative location would probably be used. Different alternatives are being investigated to determine the best solution to the problem."

Radium is the most hazardous radioactive element contained in uranium mill wastes. Its maximum permissible concentration in drinking water is exceedingly small, and its ingestion in water or in contaminated food or milk is regarded as extremely dangerous. Hence, uranium mill waste discharges to a stream may seriously interfere with such water uses as domestic supply, crop irrigation, and stock watering.

The uranium mill at Durango has been in continuous operation since 1948. In 1950 at the request of the interested states samples of water were collected from river locations above and below the mill. Dissolved radium amounted to 0.2 and 4.5 c/l respectively. The flow in the river was 220 c.f.s. at the time of sampling.

In 1955 a second brief survey was performed at Durango. Samples of water, mud, algae, and aquatic insects were collected from the river above and below the mill, as well effluents. At the river flow of 250 c.f.s. dissolved radium was again 0.2 c/l above the mill and 3.3 c/l below. The algae and aquatic insects above and the contained 6 uuc of radium per g of ash while below they contained 660 and 360 uuc/g, respectively. The two effluents from the mill contained 76 and 25 uuc/l of dissolved radium. The gross alpha activity of suspended solids in the main effluent was 33,200 uuc/l.

On the basis of these figures and the observed effluent flows it was estimated that as much as 160 lb/day of dissolved uranium was wasted to the river, and a maximum of 0.8 mg/day of dissolved radium was released. In the undisolved state an estimated 30 mg of radium were released daily. As will be seen, this figure has real significance in terms of river water quality.

E.C.Tsivoglou and M. Stein have described the dangers of excessive radium levels in their article "Industrial Waters". The polluting of the Animas River caused by discharge of uranium milling wastes from the uranium ore refinery at Durango, Colorado, deleteriously affected public water supplies at Aztec and Farmington, New Mexico, individual water supplies of ranchers and others who take raw water from the river for irrigation, fishing, swimming, and stock watering in New Mexico.

Discharges of nonradioactive chemicals to the Animas River by uranium mill at Durango, Colorado, have proven toxic to fish and aquatic life in the Animas River and such discharges have created conditions inimical to such fish and aquatic life. These facts demonstrate the importance of assessing such wastes in terms of the total human intake of related radioisotopes rather than simply in terms of water concentrations of individual radionuclides.

When the consulting firm of Black & Veatch reviewed the various alternatives for meeting Durango's future needs in 1981 they provided additional concern with respect to the mill tailings situation:

> " The second item pertains to the tailings pile from the abandoned uranium mill adjacent to the Animas River. The tailings are also upstream of the Durango Pumping Plant. As part of the Project (The Bureau's Animas La Plata Project), the effect of these tailings, including any runoff and/or seepage from the tailings, on the quality of the river waters should be thoroughly investigated. If such investigations indicate an adverse effect on the river waters, steps should be taken, as part of the Project, to eliminate these adverse effects in some manner."

The USBR has not taken into account the hazards of building the pumping plant facility near the tailings pile. EPI suggests a thorough investigation of the problem. According to an article in the Durango Herald in March of this year the manager for the project to remove the tailings pile for the Department of Energy indicated that "once the tailings are removed, more soluble elements such as arsenic, zinc and cadmium will be flushed out of the alluvial groundwater. Contaminants also have made their way into deeper groundwater...will take from 40 to 140 years to clear out once the tailings are removed."

Heavy Metals

The headwaters of the Animas River occur north of the town of Silverton, once a heavy mining area. As a result the EIS had this to say:

> Heavy metal pollution is a water quality problem only in the Animas River. High concentrations of iron, manganese, copper, lead, zinc, silver, cadmium, mercury and arsenic along with acid water cause the river to be nearly devoid of fish and aquatic insects and unusable for domestic and agricultural purposes.
>
> Aeration caused by the streams continual turbulent action and high quality inflow from tributaries act to improve the river's overall quality as the river reaches Durango.
>
> Manganese concentrations in the water could become a concern for user, since conventional sedimentation-filtration water treatment facilities do not adequately remove dissolved concentrations of manganese.
>
> Concentrations of several heavy metals in the Animas River periodically exceed drinking water standard.

The Definite Plan Report indicates that the headwaters of the Animas River are essentially a dead stream as a result of heavy metals from mining activities. Furthermore, the principle tributaries of the Animas River in the project area are Junction Creek, Lightner Creek, Basin Creek, Cascade Creek, Hermosa Creek and the Florida River. Except for the Florida River which has its flows regulated by Lemon Dam, the tributaries often go dry in late summer according to project documents.

The La Plata and Mancos rivers also pick up some heavy metals, primarily zinc, silver, cadmium, cyanide and mercury.

The EIS's conclusion that conventional water treatment will remove enough of the heavy metals in raw water supply to meet drinking water standards on a consistent basis is unsubstantiated. More data on instream metals concentrations needs to be reviewed, together with the performance of existing treatment systems in the area.

It is risky to assume that treatment beyond conventional techniques is unnecessary without further evaluation of heavy metals loading, removal efficiencies of conventional treatment systems, and contingency plans for dealing with emergencies. These evaluations are especially important in view of the local capital expenditures that must be made for treatment facilities before the water can be put to use.

The DPR indicates:

> Heavy metals are present in the Animas River at Durango, as described earlier in the section on present conditions. Some of these heavy metals already present a water treatment problem for Durango's domestic water supply. New water treatment facilities for Durango service area, to be built in coordination with the project, should be designed to reduce the excessive metal concentrations. Durango's raw water would continue to be supplemented from the Animas River through a connection with the line supplying water into Ridges Basin Reservoir. During those times when the pumping plant is not operating and when Durango's water demand is greater than that being pumped, the city's raw water supply would come from the reservoir. Therefore, Durango's water treatment problems due to heavy metals will remain the same with or without the project.

Given the past history of mining development upstream from Durango, if any future mining takes place and water pollution occurred from such mining, the Durango Pumping Plant would be shut down to prevent the contamination from being pumped into the reservoirs.

The EIS indicates that the fate of the heavy metals in the Ridges Basin Reservoir is dependent on many factors, most of which indicate that the reservoir sediments would retain most of the metals, substantially reducing the potential for water quality problems. The Bureau proposes to establish and maintain monitoring programs in both the Ridges Basin and Southern Ute Reservoirs so that water quality studies analyzing data on nutrients, salts, suspended solids, trace elements and bacteria could be performed. In addition, the retention of heavy metals would be monitored in Ridges Basin

Table 34
Quality of diversions and return flows

Use	Diversions Quantity (acre-feet)	Diversions Quality (mg/l)	Diversions Salt (tons)	Return flows[1] Quantity (acre-feet)	Return flows[1] Quality (mg/l)	Return flows[1] Salt (tons)	Salt pickup (tons)
Colorado							
La Plata Water Conservancy District							
Municipal and industrial use							
Durango service area	8,200	230	2,560	4,100	630	3,510	950
La Plata service area	1,000	230	310	500	630	430	120
Subtotal	9,200		2,870	4,600		3,940	1,070
Irrigation							
North La Plata gravity area	1,800	90	220	500	320	220	0
North La Plata area[2]	39,100	230	12,230	7,600	1,140	13,850	1,620
Dryside area	29,000	230	9,070	5,800	1,340	10,570	1,500
Stateline area	2,300	650	2,030	500	4,660	3,170	1,140
Subtotal--Irrigation	72,200		23,550	14,400		27,810	4,260
Subtotal--La Plata Water Conservancy District	81,400		26,420	19,000		31,750	5,330
Southern Ute Indian Tribe							
Municipal and industrial use	26,500	670	24,150	2,500	1,340	4,560	[3] 19,590
Irrigation							
North La Plata area	1,600	240	520	300	1,450	590	70
Dryside area	1,700	230	530	400	1,340	730	200
Subtotal	3,300		1,050	700		1,320	270
Subtotal--Southern Ute Indian Tribe	29,800		25,200	3,200		5,880	[3] 19,320
Ute Mountain Ute Indian Tribe							
Municipal and industrial use	6,000	230	1,880	0		0	-1,880
Irrigation							
North La Plata gravity area	200	147	40	100	320	40	0
Dryside area	25,600	230	8,010	5,100	1,320	9,160	1,150
Subtotal--Irrigation	25,800		8,050	5,200		9,200	1,150
Subtotal--Ute Mountain Ute Indian Tribe	31,800		9,930	5,200		9,200	-730
Municipal and industrial total	41,700		28,900	7,100		8,500	-20,400
Irrigation total	101,300		32,650	20,300		38,330	5,680
Colorado total	143,000		61,550	27,400		46,830	-14,720
New Mexico							
La Plata Conservancy District irrigation	16,000	670	14,580	3,100	4,660	19,630	5,050
Ute Mountain Ute Indian Tribe irrigation	800	230	250	200	1,320	360	110
San Juan area municipal and industrial use							
Aztec service area	5,800	310	2,450	2,900	735	2,900	450
Farmington service area	19,700	340	9,110	9,850	790	10,580	1,470
NTUA service area	7,600	340	3,510	3,800	790	4,080	570
Bloomfield service area	5,300	180	1,300	2,650	530	1,900	600
Municipal and industrial total	38,400		16,370	19,200		19,460	3,090
Irrigation total	16,800		14,830	3,300		19,990	5,160
New Mexico total	55,200		31,200	22,500		39,450	8,250
Municipal and industrial project total	80,100		45,270	26,300		27,960	-17,310
Irrigation project total	118,100		47,480	23,600		58,320	10,840
Project total	198,200		92,750	49,900		86,280	-6,470

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[1] Figures shown are averages for a 100-year period of operation.
[2] Not including lands near the State line.
[3] Negative values indicate salt removal from industrial uses.

Diversion and Salinity

All of the flow of the La Plata river will be diverted to the Southern Ute Reservoir. Return flows from the project land (988 acres and 1,874 acres) receiving water will be diverted back into the Southern Ute Reservoir. The flows from the Dryside Canal would also return to the Southern Ute Reservoir. The reservoir would be maintained at one-half capacity during average runoff years.

Nutrient loads from irrigated lands and the Ridges Basin Reservoir are not quantifiable, leaving some doubt as to the trophic state of the Southern Ute Reservoir due to nutrient loading according to the EIS.

Because of the diversion of 154,000 acre-feet of water out of the Colorado river system, the project will increase salinity levels at the Imperial Dam by 17.9 mg/l (1.7%). There would be a 300% increase in the average flow-weighted salinity of the La Plata River downstream of the Southern Ute Diversion Dam which would be caused by the project return flows and reuse of irrigation water. It is estimated that the Animas River would have a 10% increase in salinity.

It is estimated that the Animas La Plata project would increase salinity levels in the Colorado river at Imperial dam by 18.6 mg/L as a result of the concentrating effect of stream depletions and reduce salinity levels by 0.7 mg/L as a result of the salt reduction from return flow. Irrigation water would leach the remaining salts from upper lands and deposit them in the lower class six shale bottoms where drainage is restricted.

The average annual increase, based on the 100-year average would total 17.9 mg/l as measured at Imperial dam, about 1.7 percent above current levels. Studies by the USBR conclude that increasing salinity causes both direct and indirect economic losses in the Colorado River Basin estimated at $343,000 annually for each increase of 1 mg/l at Imperial Dam for a total of $6 million annually from building the Animas La Plata Project.

In agriculture, losses come from decreased crop yields, increased management costs, and the application of various adaptive practices. In the municipal and industrial areas, the losses arise primarily from increased water treatment costs, accelerated pipe corrosion and appliance wear, increased use of soap and detergents, and decreased palatability of drinking water.

In its comments on the EIS, the U.S. Environmental Protection Agency seriously questioned the accuracy of the USBR's salinity control claims. The EPA believes that the costs and delays associated with salinity control projects cast serious doubt as to the duration of these "temporary" increases. Even under the most optimistic of salinity control scenarios, 20 years of salinity levels on the order of 100 mg/liter above the 879 mg/liter level could exceed $686,000,000 in damages before the trend toward increases in salinity is reversed. No reliable estimate can be made of the damage that will occur before the target salinity levels are finally achieved.

In order to avoid these environmental and economic costs, EPA has advocated consideration of a salinity offset policy similar to the offset policy that has been used to permit new clean industry in nonattainment areas where air quality standards are violated. Under the offset policy, new air pollution sources are permitted only if emissions from existing sources are reduced to compensate for emissions from the new facility and the new facility has pollution controls that result in the lowest achievable emission rate for the pollutant in question.

Under a salinity offset policy, increased salt loading or concentration by a project such as Animas La Plata would require corresponding salinity reductions elsewhere in the basin. Thus, a development scheme which adversely impacts water quality would be allowed to proceed only if it were mitigated by some other activity which would at least nullify these adverse effects. The test for adequacy in mitigation should be that a control project or strategy is being actively and successfully implemented concurrently with the project. The proposed Animas La Plata project fails to meet this test.

The USBR appears to have overlooked the salinity impacts of surface mining. Field studies conducted elsewhere in Colorado indicate that surface mining may increase salt yields by nearly two tons per acre per year, an increase of more than 500% above the salt yield from undisturbed ground. In view of the approximately 8000 acres that would be surface mined in the study area, the cumulative increases in groundwater salinity could be very significant.

The EPA concludes that the high costs of providing storage in the Animas La Plata project, the expense of pumping and treating (possible beyond conventional treatment) Animas River water for drinking water supply purposes, and the present inefficient use of water in Durango require a complete analysis of the area's water needs and the opportunities for conservation. Farmington's excessively high per capita water use also indicates the need for similar analyses of its water supply options.

EPI's review of project reveals no analysis of the impact on groundwater quality as a result of applying irrigation water to project lands.

POWER

The project as planned would not produce any power; in fact, it is a huge user. The power for the project would be transmitted to the Shiprock Substation of the Colorado River Storage Project by a 115 KV line or would be purchased for use by project facilities elsewhere.

Because of the design of the Animas La Plata project, water must be lifted 525 feet from the Animas river to the Ridges Basin Reservoir and then another 264 to 330 feet from the reservoir to the Dry Side Canal. From the Dry Side Canal the water would go west and be pumped up into steel tanks 145 -220 feet high to create water pressure for three of the laterals. The power needs to accomplish this are:

	annual	annual
To Ridges Reservoir	25,500Kw avg	105,508,000 Kwh
To Dry Side Canal	23,600Kw avg	50,531,000 Kwh
To steel tanks	3,740Kw avg	6,709,000 Kwh
TOTAL	52,840Kw avg	162,748,000 Kwh

To put these power needs into a perspective, the EIS indicates that the energy needs of the project could serve the annual residential use for a city of about 63,000 people.

Additional lift figures were provided in the Definite Plan Report for pumping plants at Alkali Gulch (134 feet), Ute Mountain (166 feet), Southern Ute (299 feet) and Third Terrace (137 feet).

The amount of water pumped at the Durango Pumping Plant would be determined by:

1. the flow in the Animas River
2. the downstream nonproject needs
3. the project New Mexico M&I water demand
4. the minimum bypass to maintain the aquatic system
5. the capacity of the pumping plants (430 cfs)
6. the amount of water in Ridges Basin Reservoir

ENERGY DEVELOPMENT

Assessment of the Project's merits and feasibility is complicated by uncertainties in the resource development plans and goals of affected tribal groups.

In testimony before the House Appropriations Subcommittee on Energy and Water on March 25, 1981, Vice-Chairman Baker of the Southern Ute Indian Tribe had this to say about the need for the Animas La Plata Project:

> ...The nation's need for energy provides us with an opportunity to become economically self-sufficient. Our lands contain an abundance of natural gas and coal which, with an adequate supply of water, can be developed. Tribal members will have the chance to develop skills and get jobs. Sufficient agricultural, domestic, and industrial water needed for our health and economic stability is allocated to the Southern Ute Indian Tribe by the Animas La Plata Project. In addition, our relatives in the Ute Mountain Ute Indian Tribe will receive waters which they sorely need for municipal and agricultural use.
>
> Competition for water in our arid region is fierce, and for our protection, the Department of Justice has filed a lawsuit to determine our reserved rights. Even if we are legally successful, our use of the waters of the Animas and La Plata Rivers would deprive our non-Indian neighbors of water they need and use for agricultural and municipal use. Furthermore, there would still be a need for our tribe to develop water storage facilities.

In testimony presented a year earlier to the same subcommittee by Mr. Baker the following justification for the project was given:

> ...the tribe has agreed with its white and Spanish neighbors as to the extent of water which would be available to the tribe from the Project. For example, for the development of the coal on the Southern Ute Indian Reservation we have been allocated 26,600 acre feet under the project. We agree with this allocation and will work for and within the project to maximize our energy resources with this amount of water.

This question of what the water is really needed for - human consumption, energy development or economic development - needs further examination by Congress, especially if it is tied to the development of the Animas

La Plata project.

In the meetings with the Tribal representatives the picture of needing water so Tribal members will no longer have to truck water in or carry it to their homes is presented. So is the picture of developing an agricultural base for export of agricultural products - leaving aside the fact that their non-Indian neighbors will be producing the same products for some of the same markets. And last but not least is the picture presented in testimony of developing energy resources.

Even though the EIS on the project could not address specific concerns about such development because there was at the time no specific plan by the Tribes, a "hypothetical analysis of impacts" was included.

If the Southern Utes were solely interested in mining the coal and having it marketed in the Southwest, they would need 625 acre-feet of water annually for a 9.1 million ton run-of-mine coal development operation which would be 35 years in operation.

Similarly, the Ute Mountain Utes would only need 65 acre-feet of water annually for an 891,000 ton mining operation that would operate for 35 years.

In both cases an expanded rail spur would be necessary in order to move the coal.

If the Southern Utes were interested in developing a coal-fired steam generation operation (four 435 megawatt units with a 35 year plan life), that operation would need 1,000 acres of land and 26,000 acre-feet of water annually (that is to say, all of the M&I water they would receive from the Animas La Plata Indian Water Rights Agreement). The construction time would be 4 years per unit for a total of 11 years commencing the first year of water delivery from the project. The operation would need 5.1 million tons of coal per year.

The Ute Mountain Utes proposal calls for one 275 megawatt unit, requiring 250-500 acres of land with 4,100 acre-feet of water per year (one-half of the Ute Mountain Ute M&I yield from the Agreement). The unit would use 810,000 tons of coal a year.

A Coal Gasification scenario involving a 250 million cubic-foot-per-day Lurgi coal gas plant was also examined. Only coal reserves removable by strip mining operations on the Southern Ute Reservation are sufficient for such a plant. This would take 2 and one-half years to construct plus 2 years to construct the mine and require 8.8 million tons of coal per year. 7,800 to 10,000 acre-feet of water per year would be required.

With respect to the availability of coal, according to project documents there are three coal bearing geologic formations underlying the reservations. From oldest to youngest, they are the Dakota Sandstone, the Menefee Formation, and the Fruitland Formation. A portion of the coal located in the Fruitland Formation is considered to be economically recoverable at the present time. The Fruitland Formation is estimated to contain a total of 2,320 million tons of coal within 500 feet of the surface and 439 million tons within 250 feet of the surface. Of the 439 million tons, 400 million tons are located on the Southern Ute Reservation.

Aside from the environmental issues which might arise from stripmining and air pollution from the plants, any of the proposals can be expected to increase local population dramatically-- 1,000 to 7,000 people depending on the scenario pursued.

It is significant that no coal development exists in the area at present. Furthermore, Pittsburg-Midway Co. has the rights to approximately 28,000 acre-feet of water which would be stored by the project; if the project is to include coal energy development it is more likely to be undertaken by this company rather than the Indians.

The Definite Plan Report on the project indicates that the Four Corners Powerplant southwest of Farmington and the San Juan Generating Plant northwest of Fruitland burn coal mined in the vicinity of the project area to produce electric power for transmission to several neighboring states. Three additional plants are scheduled for construction adjacent to the San Juan Plant which would serve as further competition for the potential Indian energy development.

JOBS AND EMPLOYMENT FROM THE PROJECT

Seasonal Employment

Tourism contributes significantly to the local economy in Colorado and to a lesser extent in New Mexico. In the Durango area of La Plata County about one-third of all jobs are in tourism/recreation services and sales, while in the Farmington area of San Juan County about one-third of the jobs are in mineral production--gas, coal, and petroleum--and in related services and sales.

Employment in both counties is affected by the composition of the overall industrial sector and by their location in areas with large numbers of tourist attractions. Both obtain substantial revenues from motels, restaurants, cafes, and other travel-related enterprises.

The seasonal nature of the tourism industry in the Durango area significantly affects other local industries, with jobs and sales receipts declining substantially in winter. Moreover, this effect is considerably more pronounced in the Durango area than in Farmington. These basic differences produce other dissimilarities in the job market in the two areas.

As the mineral industry continues to grow in Farmington, the entire area expands because of increased job opportunities and economic needs. The Durango area economy is bolstered by the state college and the ski resort twenty-five miles outside the city limits. Seasonal tourism has a role with the ski resort, as winter is the main season for tourism. The school receives about 3,500 students every August through April and about 1,500 students in the summer months of May through early August.

Project documents state that the economic development of the area has been restricted by a number of factors, including shortage of usable water supply. Three major industries -- agriculture, tourism and lumber -- are essentially seasonal, creating unemployment problems during the winter months. Project documents indicate that winter is the Durango area's specific employment problem.

Agriculture provides income to approximately 9 percent of the labor force in La Plata County and about 3 percent in San Juan County. In the project area, about 1 out of 16 families receives direct income from farming. The other 15 families receive income from retail trade, tourism-recreation services, the state college and public services.

The main source of farm income is livestock, with crop production of lesser importance. The total value of crop and livestock production on land to receive project water was nearly $3,200,000 in 1978, as projected from Bureau of Reclamation farm budget studies.

The entire San Juan Basin, which includes the project area, is quite isolated. Any products marketed outside the basin must be trucked long distance to the market areas. Since there are no railroads in the area and freight rates on bulky products are generally prohibitive, most of the forage crops and part of the local grain are fed to livestock. The livestock are then shipped out, usually as feeders and are finished in other areas. The only crops shipped out of the area in significant amounts at the present time are wheat and beans.

Mining and Minerals

The mining of gold, lead, and zinc was once a prosperous industry and was responsible for the first settlements in the San Juan Basin. This industry is now greatly curtailed because of unfavorable mineral prices. Some mines at Silverton, on the Animas River, are active. (These mines produce metal toxins which will be discussed further in the environmental section of the report.)

Significant coal reserves exist on the Ute Mountain Ute and Southern Ute Reservations in or near the project area. Under present economic conditions, coal recoverable by surface mining methods amounts to about 39 million tons with 250 feet of overburden on the Ute Mountain Ute Reservation and 400 million tons with 250 feet of overburden on the Southern Ute Reservation.

The economic importance of the mineral industry in the project area is demonstrated in San Juan County's contribution of 11 percent, or $283,764,000 of New Mexico's total mineral production value in 1976; La Plata county contributed slightly less than 2 percent, or $16,282,964, of Colorado's total mineral production value in that year.

Project Employment

The construction of the Animas La Plata project will take ten years. During that time it will employ 1,150 private and government employees at its peak (in the 8th year). This accounts for 664 direct jobs and 465 indirect jobs in the local economy. The population influx of workers and others would be 186 the first year, 3,728 at the peak of construction, with an average of 1,810.

Unemployment is one of the biggest problems facing the Southern Ute Tribe. In 1976, unemployment was 35.9%. The rate varies from year to year depending on government and tribal projects in the area.

For example, following the completion of a waterline project on the reservation in 1977, the unemployment rate increased to 64.2%. The Southern Ute Tribe, according to project documents, has an estimated labor force of 314; and with an unemployment rate of 35-65%, this represents 110 - 200 unemployed people annually. From this unemployed labor force, the Bureau estimated that 10% of the unskilled construction labor could be supplied.

This would represent 5 or 6 Indians in the initial construction years to 20-25 employees in the peak construction years.

According to project documents, the Indians in the area would get 42 jobs during the peak of construction because of worker preferential treatment in accordance with the Indian Self-Determination and Education Assistance Act. This employment would drop the unemployment percentage on the reservations from 46% down to 40%.

According to 1978 unemployment rates, unemployment has generally been the most severe on the Indian Reservations, where about 62% of the Ute Mountain Utes and 73% of the Southern Utes were unemployed.

It is estimated that from a $400,000 annual payroll ('79 estimates) for operation and maintenance of the project, $77,000 would be paid to Indian employees. This is based on the assumption that 10% of the employees for both districts would be Indians, and approximately three Indians would be required to operate facilities on the reservation.

The construction schedule for the project is on the following page.

Because of the dividing the project into a Phase 1 and Phase 2 the original construction schedule for the project is unknown. Furthermore, the impact that this phasing will have on the operations and maintenance personnel plans for the various districts involved is also unclear. It is worth noting however, what had been contemplated (see next page).

Future Employment

According to the EIS, future employment in the project area depends in part on the Nation's energy supply. However, the document does indicate the following. With respect to jobs in agriculture:

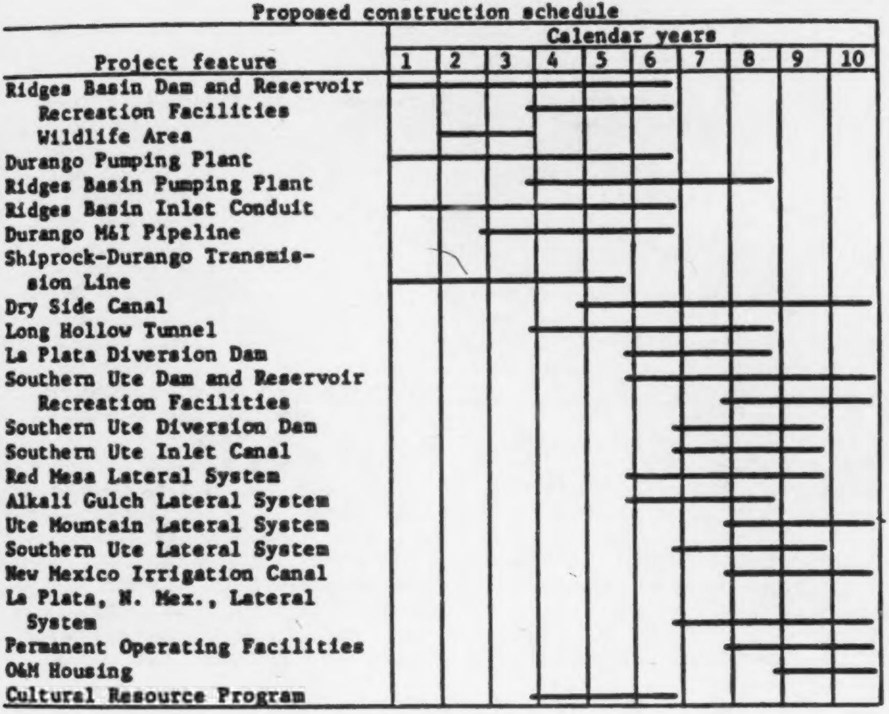
> 181 jobs in both agriculture and related business when the project is complete. It should be noted that it will take 5 to 10 years for the full service lands receiving irrigation to reach full economic potential once the water is delivered.
>
> 80 new jobs on farm for the Ute Mountain Utes
>
> 10 (seasonal) jobs at the Southern Ute Reservation

According to project documents, the assessed valuation of La Plata County would be $153 million in the final year of project construction with the project. Interestingly, the

Table 7
Total construction costs and
award date for Phase 1 features

Feature	Phase 1 ($1,000)	Construction award date	Phase 2 ($1,000)	Total cost ($1,000)
Ridges Basin Reservoir	100,000	Spring 1988	0	100,000
Southern Ute Reservoir	0		43,000	43,000
La Plata Diversion Dam	0		1,700	1,700
Southern Ute Diversion Dam	2,400	Winter 1996	0	2,400
Durango Pumping Plant	35,000	Winter 1992	0	35,000
Ridges Basin Pumping Plant	38,000	Winter 1994	3,900	41,900
Red Mesa Pumping Plant	5,100	Fall 1995	0	5,100
Alkali Gulch Pumping Plant	0		2,700	2,700
Ute Mountain Pumping Plant	0		3,600	3,600
Southern Ute Pumping Plant	0		2,900	2,900
Third Terrace Pumping Plant	0		2,500	2,500
Ridges Basin Inlet Conduit	23,000	Winter 1992	0	23,000
Dry Side Canal	33,000	Winter 1993	3,000	36,000
Long Hollow Tunnel	40,000	Fall 1990	0	40,000
Southern Ute Inlet Canal	6,000	Summer 1994	3,400	9,400
New Mexico Irrigation Canal	0		2,400	2,400
Durango M&I Pipeline	1,900	Winter 1996	0	1,900
Shenandoah M&I Pipeline	2,400	Winter 1995	0	2,400
Laterals	56,900	Fall 1992	47,020	103,920
Drains	5,100		2,700	7,800
Permanent operating facilities	3,200	Fall 1994	1,600	4,800
Operation & maintenance housing	0		170	170
Capitalized equipment	1,000		1,200	2,200
Cultural resources	12,000		5,500	17,500
Future year capacity	1,600		0	1,600
Recreation facilities				
Ridges Basin Reservoir	6,600	Fall 1995	0	6,600
Southern Ute Reservoir	0		3,200	3,200
Wildlife mitigation	5,200		120	5,320
Transmission facilities	900	Spring 1994	2,390	3,290
Total	379,300		133,000	512,300

Figure A-12
Proposed construction schedule



assessed valuation of the county would be $148 million without the project, a 3.4% difference, increasing in the year 2020 to 5%. San Juan County would remain the same with or without the project.

The average annual permanent employment opportunities (jobs) in agriculture would be:

300 Direct
80 Indirect
---
380 Total

21 Operation and Maintenance

401 Total

According to project documents, the benefits from employment of Indians from the Ute Mountain Ute and Southern Ute Indian Tribes will be realized from farm labor. The tribes have a labor force ('79) of 1,060 of which 645 are presently unemployed. Increased farm labor available to Indians will provide an equivalent of 26 jobs per year.

The magnitude of benefits associated with hired labor on Indian full service lands is estimated at $129,700 annually resulting from 39,921 hours of hired labor at $3.25 per hour. The following are data on employment and unemployment for the Southern Ute and Ute Mountain Ute Indian Tribes for 1978.

	Southern Ute	Ute Mountain Ute	Total
Residents	848	1,425	2,273
Labor Force	468	591	1,060
Employed	192	222	414
Unemployed	277	368	645
Male	101	136	237
Female	176	232	408

Thus, it appears that energy development is really the only key for job development in the area. According to the project documents, huge population increases from 1,000 to 7,000 in the work force would be associated with the various coal development scenarios.

PROJECT ECONOMICS

The separable cost-remaining benefit method has been used by the Bureau in allocating costs for the Project. Under this method, costs associated with a single purpose are assigned to that purpose, and joint costs are shared among all participants based on the amount of their justifiable expenditures. The justifiable expenditure is the present worth of the annual benefits for that participant or the costs of the most likely Federal single-purpose alternative project that would provide comparable services and benefits.

The costs for constructing the project are on the following page.

Costs for single purpose alternatives have been estimated for irrigation and municipal and industrial water. Construction costs, interest during construction, and operation, maintenance, and replacement costs were computed using the same price level, interest rates, estimating procedure, and when appropriate, the cost level as the multipurpose project.

The benefit/cost ratio for the project has changed over the history of the project. The following table indicates those changes:

	Direct Benefits	Total Benefits
1968	1.0/1	1.6/1
1979	1.27/1	1.39/1
1987	1.5/1	1.6/1

The Bureau did not include in its analysis the costs of the salinity effects resulting from depleting 154,800 a/f of stream flow by the project.

Before the project was divided into a Phase I and Phase II the following information gave a glimmer of what the project features were going to cost the city of Durango:

TOTAL REIMBURSABLE COSTS CITY OF DURANGO
Animas - La Plata PROJECT

		1981 Costs ($1000)
Separable features		
Durango Pumping Plant	cc	4,351
Ridges Basin Inlet Conduit	i	1,330
	annual omr	90
Durango M&I Pipeline		1,820
		162

Project repayment
($1,000)

	Construction cost	Interest during construction	Annual OM&R
Irrigation			
Phase 1			
Prepayments	634	0	0
Ad valorem tax	9,433	0	0
Local cost sharing	37,625	0	0
Subtotal	244,955	37,421	1,703.60
Phase 2	119,649	12,349	533.62
Subtotal irrigation	361,604	37,421	2,289.22
Municipal and Industrial Water (all in Phase 1)			
Animas-La Plata Water Conservancy District			
Up front	7,300	0	0
Repayment contract	2,978	3,749	114.33
State of Colorado	5,600	2,042	0
San Juan Water Commission	12,777	4,313	60.93
Southern Ute Tribe	57,831	21,282	494.39
Ute Mountain Ute Tribe	8,947	3,550	105.28
Navajo Indian Tribe	3,153	1,189	15.03
Subtotal	98,536	36,533	790.96
Non-reimbursable Fish and Wildlife and Cultural Resources			
Phase 1	30,860	5,456	286.27
Phase 2	13,351	1,978	204.38
Subtotal	44,211	*7,434	490.65
Colorado Water Resource and Power Development Authority			
Phase 1	4,900	0	0
Total Phase 1	379,300	79,510	2,780.83
Total Phase 2	133,000	16,327	837.70
Total Project	512,300	**,***	********

Total separable costs	6,171
	1,492
	93
Joint Features	
Durango Pumping Plant,	
Ridges Basin	5,514
Conduit, Ridges Basin	1,134
Dam & Reservoir	7
Shiprock-Durango Turnline	
Permanent Operating	
Facilities, Salvage, ect.	
Total allocated Costs	11,685
	2,626
	97
Reimbursable costs	11,685
	2,626
Total capital costs	14,311
Annual equivalent 09460)	1,354
TOTAL ANNUAL COSTS	1,451

The cost to the city remains at the above figures regardless of the acre-feet of project waters actually received and utilized each year. The USBR has reduced these costs to annual costs allocated to Durango over the repayment period. These annual costs, adjusted with the current Federal interest rate, are as follows:

Capital Costs		
1990 - 1999	Annual Cost	$ 738,000
2000 - 2039	Annual Cost	1,354,000
2040 - 2049	Annual Cost	616,000
OM&R Costs		
1990 - 2049	Annual Cost	97,000

*Assumes first 3,900 ac-ft of Project waters available and purchased in 1990.

Based on these figures and the quantity of water available to Durango from the Project, the annual cost of Project water would be:

Period Annual Cost Available Water Annual
Cost------ ----------- --------------
-------$ ac-ft $/ac-ft

Project Costs

Table 6 arrays the costs associated with the facilities just described. Some of the costs were calculated in plan formulation in July 1977 and were indexed up to January 1978 costs. Also shown on the table are the detailed costs used in the Definite Plan Report. The plan formulation estimate is $280,000,000 plus $20,000,000 interest during construction for a total investment of $300,000,000. The actual detailed cost estimate was $335,600,000 with $22,300,000 interest during construction for a total investment of $357,900,000. The plan formulation costs were within 20 percent of the detailed estimate, indicating the reliability of reconnaissance cost estimating procedures.

Table 6
Plan of development
Costs associated with facilities

	January 1978 construction costs	
Facility	Plan formulation cost	Definite Plan Report cost
Ridges Basin Reservoir	$52,000,000	$51,000,000
Southern Ute Reservoir	24,000,000	24,000,000
Durango Pump Plant Complex[1/]	25,500,000	39,500,000
Ridges Basin Pump Plant Complex	23,500,000	30,000,000
Sprinkler pump plants	6,500,000	12,300,000
Dry Side Canal	50,000,000	54,000,000
New Mexico Irrigation Canal	4,200,000	2,000,000
Southern Ute Inlet Canal	3,200,000	5,300,000
Southern Ute Diversion Dam	1,100,000	2,000,000
La Plata Diversion Dam	800,000	1,300,000
Pipe laterals	72,000,000	80,990,000
Drains	3,600,000	5,140,000
Lost Canyon transmission line	5,400,000	8,640,000
Durango Pipeline	6,000,000	1,250,000
Recreation facilities	1,400,000	6,000,000
Permanent operation facilities	800,000	4,200,000
Operation and maintenance housing	0	130,000
Fish and wildlife	0	4,600,000
Archaeology	0	3,000,000
Future year capacity	0	1,000,000
Total construction cost	280,000,000	336,350,000
Interest during construction	20,000,000	21,893,000
Total investment	300,000,000	358,243,000

[1/] Includes Ridges Basin inlet conveyance system.

Table 7 shows the annual operation, maintenance, and replacement costs used in plan formulation studies.

Summary of project costs

	Construction cost	Interest during construction	Annual operation, maintenance, and replacement costs
Section 5 facilities			
Ridges Basin Dam and Reservoir	51,000	3,481	25
Durango Pumping Plant	24,000	2,639	903
Ridges Basin Pumping Plant	30,000	1,521	391
Ridges Basin Inlet Conduit	15,500	1,708	0
Durango municipal and industrial pipeline	1,250	39	0
Shiprock-Durango transmission line	6,600	637	70
Southern Ute Dam and Reservoir	24,000	1,351	23
Southern Ute Diversion Dam	2,000	172	28
Southern Ute Inlet Canal	5,300	334	0
La Plata Diversion Dam	1,300	113	19
Dry Side Canal	29,000	1,951	73
Long Hollow Tunnel	25,000	2,800	0
Red Mesa Pumping Plant	3,800	139	52
Red Mesa laterals	19,000	964	39
Red Mesa Pumping Plant transmission line	600	22	7
Alkali Gulch Pumping Plant	2,000	41	31
Alkali Gulch laterals	7,200	223	15
Alkali Gulch Pumping Plant transmission line	390	9	3
Dry Side laterals	14,000	714	16
Ute Mountain Pumping Plant	2,600	142	36
Ute Mountain laterals	29,000	1,473	60
Ute Mountain Pumping Plant transmission line	390	21	3
Southern Ute Pumping Plant	2,100	46	19
Southern Ute laterals	790	17	8
Southern Ute Pumping Plant transmission line	440	10	6
Third Terrace Pumping Plant	1,800	40	17
New Mexico Irrigation Canal	2,000	42	38
La Plata-New Mexico laterals	11,000	370	26
Third Terrace Pumping Plant transmission line	220	5	2
Red Mesa drains	990	5	0
Alkali Gulch drains	410	2	0
Dry Side drains	1,350	7	0
Ute Mountain drains	690	3	0
La Plata-New Mexico drains	1,300	7	0
Permanent operating facilities	2,800	189	0
Permanent operating facilities and equipment	1,400	29	0
Operation and maintenance housing	130	3	0
Service facilities, depreciation, and salvage	0	317	0
Archaeological salvage	3,000	230	0
Future year capacity[1/]	1,000	37	0
Subtotal	325,750	21,893	1,910
Section 8 facilities			
Ridges Basin recreation facilities	3,900	239	128
Southern Ute recreation facilities	2,100	70	99
Fish and wildlife mitigation facilities	4,600	81	0
Subtotal	10,600	390	227
Total (all facilities)	336,350	22,283	2,137

1/ Irrigation OM&R assistance during the early years before all of the irrigation blocks are in service.

Project water charges would be determined for individuals as follows.

1. An account charge of $50 per account.
2. A project pressure charge per acre, excluding operation, maintenance, and replacement costs of $4.20 in New Mexico and $1.80 in Colorado.
3. A project water charge per acre-foot, excluding operation, maintenance, and replacement costs of $2.10 for full service lands in Colorado; $2.90 for supplemental service lands in Colorado; $4.60 for full service lands in New Mexico; and $6.20 for supplemental service lands in New Mexico. Table 72 shows how these values are derived.
4. A prorated share of operation, maintenance, and replacement costs allocated to irrigation each year. Since operation, maintenance, and replacement will vary from year to year, a dollar amount will not be shown in the petition. The petition should indicate how operation, maintenance, and replacement charges will be determined for individual water users. It is recommended that operation, maintenance, and replacement charges be assessed to project pressure and project water.

1990-1999	835,000	3,900	214.10
2000-2039	1,451,000	8,200	176.95
2040-2049	713,000	8,200	86.95

However, the USBR has estimated that the Durango area will only use 2,200 ac-ft of Project waters in 1990; 3,900 ac-ft in 2000; 5,900 ac-ft in 2010; and 8,200 ac-ft in 2020. Using these figures, the cost per ac-ft annually would be:

		Estimated	
Year	Annual Cost	Water Used	Annual Cost
	$	ac-ft	$ / ac-ft
1990	835,000	2,200	379.55
2000	1,451,000	3,900	372.05
2010	1,451,000	5,900	261.19
2020	1,451,000	8,200	176.95

* Figures taken from Black&Veatch

Given the changes that have occured by dividing the project into Phase I and II and the negotiations that are still going on it is difficult to break out the costs now as opposed to 1981. The following table from the Bureau does give an idea of the project repayment under the current plan (see next page).

In addition, the Bureau has provided the following preliminary information on the Phase 1 annual water charges: (see next page).

COST SHARING AGREEMENT

In 1985, the United States Congress mandated that the participants in the Animas La Plata Project develop a reasonable arrangement for cost sharing that will be satisfactory to the Secretary of the Interior. The Secretary agreed to the cost sharing plan, which contains a combination of non-federal funding and phased construction, with the second phase to be constructed through non-federal financing.

The non-federal financing of project construction is being provided by an escrow account created by the Colorado Water Resources and Power Development Authority, a series of annual payments and a lump-sum payment by the Animas La Plata Water Conservancy District, a lump-sum payment by Montezuma County, annual payments from a development fund for New Mexico municipal and industrial water facilities

Table 11
Phase 1 annual water charges

	Annual repayment charge ($1,000)	Annual OM&R ($1,000)	Total annual charges ($1,000)	Water supply (acre-feet)	Annua charg acre-f ($)
Irrigation					
Colorado					
Non-Indian					
Full service	199	736	935	41,200	22.7
Supplemental service	67	246	313	13,800	22.7
Southern Ute Tribe					
Full service	19	43	62	2,700	23.0
Ute Mountain Ute Tribe					
Full service	*				
New Mexico					
Non-Indian					
Full service	31	130	161	7,500	21.4
Supplemental service	9	40	49	2,300	21.4
Ute Mountain Ute Tribe					
Full service	*			900	
Municipal and Industrial					
Colorado					
Durango	732	27	759	2,500	304.0
Rural	465	35	500	2,000	250.0
South Durango	706	22	728	2,000	364.0
Animas-La Plata Water Conservancy District	509	29	538	2,700	199.0
Southern Ute Tribe	8,804	489	9,293	26,500	351.0
Ute Mountain Ute Tribe	1,392	106	1,498	6,000	250.0
New Mexico					
Farmington	1,252	39	1,291	19,700	66.0
Aztec	369	11	380	5,800	66.0
Bloomfield	337	10	347	5,300	66.0
Navajo Indian Tribe	483	15	498	7,500	66.0

Summary of average annual water charges

	Cost of construction and reimbursable interest during construction	Water supply (acre-feet)	Annual operation, maintenance, and replacement costs
Irrigation[1]			
La Plata Water Conservancy District, Colorado			
Year 1		12,580	137,100
Year 2	7,100	61,700	722,400
Year 3	7,100	72,200	834,000
Year 4	9,300	72,200	834,000
Year 5	81,200	72,200	834,000
Year 6	120,800	72,200	834,000
Year 7	224,200	72,200	834,000
Years 7-51	258,100	72,200	834,000
Years 52-53	251,000	72,200	834,000
Year 54	248,800	72,200	834,000
Year 55	176,900	72,200	834,000
Year 56	137,300	72,200	834,000
Year 57	33,900	72,200	834,000
La Plata Conservancy District, New Mexico			
Years 3-5		16,000	159,000
Years 6-7	43,400	16,000	159,000
Years 8-55	118,400	16,000	159,000
Years 56-57	75,000	16,000	159,000
Municipal and industrial water users[2]			
Durango			
Years 1-10 (block 1)	364,400	4,100	67,000
Years 11-50 (blocks 1 and 2)	639,100	8,200	67,000
Years 51-60 (block 2)	274,700	8,200	67,000
La Plata rural area			
Years 1-10 (block 1)	69,300	600	12,000
Years 11-50 (blocks 1 and 2)	115,700	1,000	12,000
Years 51-60 (block 2)	46,400	1,000	12,000
Subtotal La Plata Water Conservancy District			
Years 1-10 (block 1)	433,700	4,700	79,000
Years 11-50 (blocks 1 and 2)	754,800	9,200	79,000
Years 51-60 (block 2)	321,100	9,200	79,000
Farmington			
Years 1-10 (block 1)	263,800	9,800	46,000
Years 11-50 (blocks 1 and 2)	529,000	19,700	46,000
Years 51-6- (block 2)	265,200	19,700	46,000
Aztec			
Years 1-10 (block 1)	116,600	4,350	13,000
Years 11-50 (blocks 1 and 2)	155,700	5,800	13,000
Years 51-60 (block 2)	39,100	5,800	13,000
Bloomfield			
Years 1-10 (block 1)	106,700	4,000	12,000
Years 11-50 (blocks 1 and 2)	142,400	5,300	12,000
Years 51-60 (block 2)	35,700	5,300	12,000
Southern Ute Indians			
Years 1-10			365,000
Years 11-50	3,947,100	26,500	365,000
Years 51-60	3,947,100	26,500	365,000
Ute Mountain Ute Indians			
Years 1-10			78,000
Years 11-50	691,800	6,000	78,000
Years 51-60	691,800	6,000	78,000
Navajo Tribal Utility Authority			
Years 1-10 (block 1)	143,000	5,300	18,000
Years 11-50 (blocks 1 and 2)	204,400	7,600	18,000
Years 51-60 (block 2)	61,400	7,600	18,000

[1] Does not include ad valorem tax revenues.

[2] Last payment on each municipal and industrial water block may vary slightly.

Payment schedule
Municipal and industrial water
Southern Ute and Ute Mountain Ute Indians[1]
(Interest rate--6.595 percent)
(Unit--$1,000)

Year of study	Fiscal year	Southern Ute Indian Tribe: Total payment	Payment to interest	Payment to principal	Unpaid balance	Allowable unpaid balance	Plant in service	Ute Mountain Ute Indian Tribe: Total payment	Payment to interest	Payment to principal	Unpaid balance	Allowable unpaid balance	Plant in service	Year of study	Fiscal year
0	1989	[2] 181.0	0	[2] 181.0	57,196.0	57,377.0	57,377.0	[2] 34.0	0	[2] 34.0	10,059.0	10,093.0	10,093.0	0	1989
1	1990	0		0				0		0				1	1990
2	1991													2	1991
3	1992													3	1992
4	1993													4	1993
5	1994													5	1994
6	1995													6	1995
7	1996													7	1996
8	1997													8	1997
9	1998													9	1998
10	1999	0	0	0	57,396.0			0	0	0	10,059.0			10	1999
11	2000	3,947.1	3,785.3	161.8	57,234.2			691.8	663.4	28.4	10,030.6			11	2000
12	2001		3,774.6	172.5	57,061.7				661.5	30.3	10,000.3			12	2001
13	2002		3,763.2	183.9	56,877.8				659.5	32.3	9,968.0			13	2002
14	2003		3,751.1	196.0	56,681.8				657.4	34.4	9,933.6			14	2003
15	2004		3,738.2	208.9	56,472.9				655.1	36.7	9,896.9			15	2004
16	2005		3,724.4	222.7	56,250.2				652.7	39.1	9,857.8			16	2005
17	2006		3,709.7	237.4	56,012.8				650.1	41.7	9,816.1			17	2006
18	2007		3,694.0	253.1	55,759.7				647.4	44.4	9,771.7			18	2007
19	2008		3,677.4	269.7	55,490.0				644.4	47.4	9,724.3			19	2008
20	2009		3,659.4	287.7	55,202.3				641.3	50.5	9,673.8			20	2009
21	2010		3,640.8	306.3	54,896.0				638.0	53.8	9,620.0			21	2010
22	2011		3,620.4	326.7	54,569.3				634.4	57.4	9,562.6			22	2011
23	2012		3,598.8	348.3	54,221.0				630.7	61.1	9,501.5			23	2012
24	2013		3,575.9	371.2	53,849.8				626.6	65.2	9,436.3			24	2013
25	2014		3,551.4	395.7	53,454.1				622.3	69.5	9,366.8			25	2014
26	2015		3,525.3	421.8	53,032.3				617.7	74.1	9,292.7			26	2015
27	2016		3,497.5	449.6	52,582.7				612.9	78.9	9,213.8			27	2016
28	2017		3,467.8	479.3	52,103.4				607.7	84.1	9,129.7			28	2017
29	2018		3,436.2	510.9	51,592.5				602.1	89.7	9,040.0			29	2018
30	2019		3,402.5	544.6	51,047.9				596.2	95.6	8,944.4			30	2019
31	2020		3,366.6	580.5	50,467.4				589.9	101.9	8,842.5			31	2020
32	2021		3,328.3	618.8	49,848.6				583.2	108.6	8,733.9			32	2021
33	2022		3,287.5	659.6	49,189.0				576.0	115.8	8,618.1			33	2022
34	2023		3,244.0	703.1	48,485.9				568.4	123.4	8,494.7			34	2023
35	2024		3,197.6	749.5	47,736.4				560.2	131.6	8,363.1			35	2024
36	2025		3,148.2	798.9	46,937.5				551.5	140.3	8,222.8			36	2025
37	2026		3,095.5	851.6	46,085.9				542.3	149.5	8,073.3			37	2026
38	2027		3,039.4	907.7	45,178.2				532.4	159.4	7,913.9			38	2027
39	2028		2,979.5	967.6	44,210.6				521.9	169.9	7,744.0			39	2028
40	2029		2,915.7	1,031.4	43,179.2				510.7	181.1	7,562.9			40	2029
41	2030		2,847.7	1,099.4	42,079.8				498.8	193.0	7,369.9			41	2030
42	2031		2,775.2	1,171.9	40,907.9				486.0	205.8	7,164.1			42	2031
43	2032		2,697.9	1,249.2	39,658.7				472.5	219.3	6,944.8			43	2032
44	2033		2,615.5	1,331.6	38,327.1				458.0	233.8	6,711.0			44	2033
45	2034		2,527.7	1,419.4	36,907.7				442.6	249.2	6,461.8			45	2034
46	2035		2,434.1	1,513.0	35,394.7				426.2	265.6	6,196.2			46	2035
47	2036		2,334.3	1,612.8	33,781.9				408.6	283.2	5,913.0			47	2036
48	2037		2,227.9	1,719.2	32,062.7				390.0	301.8	5,611.2			48	2037
49	2038		2,114.5	1,832.6	30,230.1				370.1	321.7	5,289.5			49	2038
50	2039		1,993.7	1,953.4	28,276.7				348.8	343.0	4,946.5			50	2039
51	2040		1,864.8	2,082.3	26,194.4				326.2	365.6	4,580.9			51	2040
52	2041		1,727.5	2,219.6	23,974.8				302.1	389.7	4,191.2			52	2041
53	2042		1,581.1	2,366.0	21,608.8				276.4	415.4	3,775.8			53	2042
54	2043		1,425.1	2,522.0	19,086.8				249.0	442.8	3,333.0			54	2043
55	2044		1,258.8	2,688.3	16,398.5				219.8	472.0	2,861.0			55	2044
56	2045		1,081.5	2,865.6	13,532.9				188.5	503.3	2,357.7			56	2045
57	2046		892.5	3,054.6	10,478.3				155.5	536.3	1,821.4			57	2046
58	2047		691.0	3,256.1	7,222.2				120.1	571.7	1,249.7			58	2047
59	2048	3,947.1	476.3	3,470.8	3,751.4	57,377.0		691.8	82.4	609.4	640.3	10,093.0		59	2048
60	2049	3,998.8	247.4	3,751.4	0	0	57,377.0	682.5	42.2	640.3	0	0	10,093.0	60	2049
Total		197,587.7	140,210.7	57,377.0				34,614.7	24,521.7	10,093.0					Total

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[1] Includes reimbursable interest during construction: Southern Utes, $8,177,000; Ute Mountain Utes, $1,316,000.

[2] Credited from Colorado River Development Fund and contributed funds.

Payment schedule 1/
Municipal and industrial water
Navajo Tribal Utility Authority
(6.599 percent)
(Unit—$1,000)

Year of study	Fiscal year	Block 1—[illegible] acre-feet, Annual payment 2/—$143,000: Payment to interest	Block 1: Payment to principal	Block 1: Unpaid balance	Plant in service	Block 2—2,100 acre-feet, Annual payment 2/—$61,400: Payment to interest	Block 2: Payment to principal	Block 2: Unpaid balance	Plant in service	Totals: Total payment	Totals: Payment to interest	Totals: Payment to principal	Totals: Unpaid balance	Totals: Allowable unpaid balance	Totals: Plant in service	Year of study	Fiscal year
					2,083.0				893.0					2,976.0	2,976.0		
0	1989		3.0	2,080.0						3.0	0	3.0	2,080.0	↓	↓	0	1989
1	1990	137.2	5.8	2,074.2		0	0	0		143.0	137.2	5.8	2,074.2	↓	↓	1	1990
2	1991	136.8	6.2	2,068.0		↓	↓	↓		↓	136.8	6.2	2,068.0	↓	↓	2	1991
3	1992	136.4	6.6	2,061.4		↓	↓	↓		↓	136.4	6.6	2,061.4	↓	↓	3	1992
4	1993	135.9	7.1	2,054.3		↓	↓	↓		↓	135.9	7.1	2,054.3	↓	↓	4	1993
5	1994	135.5	7.5	2,046.8		↓	↓	↓		↓	135.5	7.5	2,046.8	↓	↓	5	1994
6	1995	135.0	8.0	2,038.8		↓	↓	↓		↓	135.0	8.0	2,038.8	↓	↓	6	1995
7	1996	134.5	8.5	2,030.3		↓	↓	↓		↓	134.5	8.5	2,030.3	↓	↓	7	1996
8	1997	133.9	9.1	2,021.2		↓	↓	↓		↓	133.9	9.1	2,021.2	↓	↓	8	1997
9	1998	133.3	9.7	2,011.5		0	0	0		↓	133.3	9.7	2,011.5	↓	↓	9	1998
10	1999	132.7	10.3	2,001.2				893.0		143.0	132.7	10.3	2,894.2	↓	↓	10	1999
11	2000	132.0	11.0	1,990.2		58.9	2.5	890.5		204.4	190.9	13.5	2,880.7	↓	↓	11	2000
12	2001	131.3	11.7	1,978.5		58.7	2.7	887.8		↓	190.0	14.4	2,866.3	↓	↓	12	2001
13	2002	130.5	12.5	1,966.0		58.6	2.8	885.0		↓	189.1	15.3	2,851.0	↓	↓	13	2002
14	2003	129.7	13.3	1,952.7		58.4	3.0	882.0		↓	188.1	16.3	2,834.7	↓	↓	14	2003
15	2004	128.8	14.2	1,938.5		58.2	3.2	878.8		↓	187.0	17.4	2,817.3	↓	↓	15	2004
16	2005	127.8	15.2	1,923.3		58.0	3.4	875.4		↓	185.8	18.6	2,798.7	↓	↓	16	2005
17	2006	126.8	16.2	1,907.1		57.7	3.7	871.7		↓	184.5	19.9	2,778.8	↓	↓	17	2006
18	2007	125.8	17.2	1,889.9		57.5	3.9	867.8		↓	183.3	21.1	2,757.7	↓	↓	18	2007
19	2008	124.6	18.4	1,871.5		57.2	4.2	863.6		↓	181.8	22.6	2,735.1	↓	↓	19	2008
20	2009	123.4	19.6	1,851.9		57.0	4.4	859.2		↓	180.4	24.0	2,711.1	↓	↓	20	2009
21	2010	122.1	20.9	1,831.0		56.7	4.7	854.5		↓	178.8	25.6	2,685.5	↓	↓	21	2010
22	2011	120.8	22.2	1,808.8		56.4	5.0	849.5		↓	177.2	27.2	2,658.3	↓	↓	22	2011
23	2012	119.3	23.7	1,785.1		56.0	5.4	844.1		↓	175.3	29.1	2,629.2	↓	↓	23	2012
24	2013	117.7	25.3	1,759.8		55.7	5.7	838.4		↓	173.4	31.0	2,598.2	↓	↓	24	2013
25	2014	116.1	26.9	1,732.9		55.3	6.1	832.3		↓	171.4	33.0	2,565.2	↓	↓	25	2014
26	2015	114.3	28.7	1,704.2		54.9	6.5	825.8		↓	169.2	35.2	2,530.0	↓	↓	26	2015
27	2016	112.4	30.6	1,673.6		54.5	6.9	818.9		↓	166.9	37.5	2,492.5	↓	↓	27	2016
28	2017	110.4	32.6	1,641.0		54.0	7.4	811.5		↓	164.4	40.0	2,452.5	↓	↓	28	2017
29	2018	108.2	34.8	1,606.2		53.5	7.9	803.6		↓	161.7	42.7	2,409.8	↓	↓	29	2018
30	2019	105.9	37.1	1,569.1		53.0	8.4	795.2		↓	158.9	45.5	2,364.3	↓	↓	30	2019
31	2020	103.5	39.5	1,529.6		52.4	9.0	786.2		↓	155.9	48.5	2,315.8	↓	↓	31	2020
32	2021	100.9	42.1	1,487.5		51.8	9.6	776.6		↓	152.7	51.7	2,264.1	↓	↓	32	2021
33	2022	98.1	44.9	1,442.6		51.2	10.2	766.4		↓	149.3	55.1	2,209.0	↓	↓	33	2022
34	2023	95.1	47.9	1,394.7		50.5	10.9	755.5		↓	145.6	58.8	2,150.2	↓	↓	34	2023
35	2024	92.0	51.0	1,343.7		49.8	11.6	743.9		↓	141.8	62.6	2,087.6	↓	↓	35	2024
36	2025	88.6	54.4	1,289.3		49.1	12.3	731.6		↓	137.7	66.7	2,020.9	↓	↓	36	2025
37	2026	85.0	58.0	1,231.3		48.2	13.2	718.4		↓	133.2	71.2	1,949.7	↓	↓	37	2026
38	2027	81.2	61.8	1,169.5		47.4	14.0	704.4		↓	128.6	75.8	1,873.9	↓	↓	38	2027
39	2028	77.1	65.9	1,103.6		46.5	14.9	689.5		↓	123.6	80.8	1,793.1	↓	↓	39	2028
40	2029	72.8	70.2	1,033.4		45.5	15.9	673.6		↓	118.3	86.1	1,707.0	↓	↓	40	2029
41	2030	68.2	74.8	958.6		44.4	17.0	656.6		↓	112.6	91.8	1,615.2	↓	↓	41	2030
42	2031	63.2	79.8	878.8		43.3	18.1	638.5		↓	106.5	97.9	1,517.3	↓	↓	42	2031
43	2032	58.0	85.0	793.8		42.1	19.3	619.2		↓	100.1	104.3	1,413.0	↓	↓	43	2032
44	2033	52.4	90.6	703.2		40.8	20.6	598.6		↓	93.2	111.2	1,301.8	↓	↓	44	2033
45	2034	46.4	96.6	606.6		39.5	21.9	576.7		↓	85.9	118.5	1,183.3	↓	↓	45	2034
46	2035	40.0	103.0	503.6		38.0	23.4	553.3		↓	78.0	126.4	1,056.9	↓	↓	46	2035
47	2036	33.2	109.8	393.8		36.5	24.9	528.4		↓	69.7	134.7	922.2	↓	↓	47	2036
48	2037	26.0	117.0	276.8		34.8	26.6	501.8		↓	60.8	143.6	778.6	↓	↓	48	2037
49	2038	18.3	124.7	152.1		33.1	28.3	473.5		204.4	51.4	153.0	625.6	2,976.0	↓	49	2038
50	2039	10.0	152.1	0		31.2	30.2	443.3		223.5	41.2	182.3	443.3	893.0	↓	50	2039
51	2040					29.2	32.2	411.1		61.4	29.2	32.2	411.1	↓	↓	51	2040
52	2041					27.1	34.3	376.8		↓	27.1	34.3	376.8	↓	↓	52	2041
53	2042					24.8	36.6	340.2		↓	24.8	36.6	340.2	↓	↓	53	2042
54	2043					22.4	39.0	301.2		↓	22.4	39.0	301.2	↓	↓	54	2043
55	2044					19.9	41.5	259.7		↓	19.9	41.5	259.7	↓	↓	55	2044
56	2045					17.1	44.3	215.4		↓	17.1	44.3	215.4	↓	↓	56	2045
57	2046					14.2	47.2	168.2		↓	14.2	47.2	168.2	↓	↓	57	2046
58	2047					11.1	50.3	117.9		↓	11.1	50.3	117.9	↓	↓	58	2047
59	2048					7.8	53.6	64.3		61.4	7.8	53.6	64.3	893.0	↓	59	2048
60	2049					4.2	64.3	0		68.5	4.2	64.3	0	0	↓	60	2049
Total		5,089.1	2,083.0			2,184.1	893.0			10,249.2	7,273.2	2,976.0			2,976.0		Total

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1/ Includes $478,000 reimbursable interest during construction.
2/ Last payment may vary.

[illegible]

[illegible]

Summary of project costs

	Construction cost	Interest during construction	Annual operation, maintenance, and replacement costs
Section 5 facilities			
Ridges Basin Dam and Reservoir	51,000	3,481	25
Durango Pumping Plant	24,000	2,639	903
Ridges Basin Pumping Plant	30,000	1,521	391
Ridges Basin Inlet Conduit	15,500	1,708	0
Durango municipal and industrial pipeline	1,250	39	0
Shiprock-Durango transmission line	6,600	657	70
Southern Ute Dam and Reservoir	24,000	1,351	23
Southern Ute Diversion Dam	2,000	172	28
Southern Ute Inlet Canal	5,300	354	0
La Plata Diversion Dam	1,300	113	19
Dry Side Canal	29,000	1,951	73
Long Hollow Tunnel	25,000	2,800	0
Red Mesa Pumping Plant	3,800	139	52
Red Mesa laterals	19,000	964	39
Red Mesa Pumping Plant transmission line	600	22	7
Alkali Gulch Pumping Plant	2,000	41	31
Alkali Gulch laterals	7,200	223	15
Alkali Gulch Pumping Plant transmission line	390	9	3
Dry Side laterals	14,000	714	16
Ute Mountain Pumping Plant	2,600	142	36
Ute Mountain laterals	29,000	1,473	60
Ute Mountain Pumping Plant transmission line	390	21	3
Southern Ute Pumping Plant	2,100	46	19
Southern Ute laterals	790	17	8
Southern Ute Pumping Plant transmission line	440	10	6
Third Terrace Pumping Plant	1,800	40	17
New Mexico Irrigation Canal	2,000	42	38
La Plata-New Mexico laterals	11,000	370	26
Third Terrace Pumping Plant transmission line	220	5	2
Red Mesa drains	990	5	0
Alkali Gulch drains	410	2	0
Dry Side drains	1,550	7	0
Ute Mountain drains	690	3	0
La Plata-New Mexico drains	1,500	7	0
Permanent operating facilities	2,800	189	0
Permanent operating facilities and equipment	1,400	29	0
Operation and maintenance housing	130	3	0
Service facilities, depreciation, and salvage	0	317	0
Archaeological salvage	3,000	230	0
Future year capacity 1/	1,000	37	0
Subtotal	325,750	21,893	1,910
Section 8 facilities			
Ridges Basin recreation facilities	3,900	239	128
Southern Ute recreation facilities	2,100	70	99
Fish and wildlife mitigation facilities	4,600	81	0
Subtotal	10,600	390	227
Total (all facilities)	336,350	22,283	2,137

1/ Irrigation OM&R assistance during the early years before all of the irrigation blocks are in service.

by the San Juan Water Commission, and appropriations by the Colorado General Assembly. Unspecified non-federal contributors will finance all of Phase 2 facilities. Federal financing of the project will only apply to features constructed during Phase 1.

Project financing

Phase-1-Non-federal financing	
State of Colorado	
Colorado Water Resource and Power Development Authority	42,400,000
General Assembly appropriation	5,600,000
Animas La Plata Water Conservancy District	
Lump-sum payment	7,300,000
total of annual payments	75,000
Montezuma County	50,000
San Juan Water Commission	12,800,000
Subtotal	68,225,000
Phase 2--Non-federal financing	
Non-federal sources of finance	133,000,000
Total non-federal financing	202,225,000
Phase 1--Federal financing	311,075,000
Total project financing	512,300,000

In addition to the project financing outlined above, the United States Congress will have to appropriate $49.5 million in three annual payments for both tribes to create tribal development funds. The state of Colorado will have to deposit $5 million toward these funds and will spend approximately $6 million to construct the Towaoc pipeline and domestic distribution system on the Ute Mountain Ute Indian Reservation. These agreements where initially made in the contracts of the Dolores project.

Previous projects participating in the CRSP have the power repayments scheduled to be made as a lump sum in the last year of the 50 year repayment period. With the Animas La Plata Project, however, the cost-sharing negotiators agreed to pursue repayment from the power revenues over a 30-year period with equal payments to be made during each year.

To obtain repayment, the Conservancy District in Colorado has authority under Colorado law to levy and collect taxes on all real property within the district's boundaries. The maximum tax assessment in Colorado for a water conservancy district with assessed valuation of more than $50,000,000 (once organized) is 1/2 mill for each dollar of assessed valuation prior to the delivery of project water. After the delivery of project water, the maximum levy can be increased to 1.0 mill (this can go up to 3 mills with vote) . The taxes levied by the Conservancy District are collected through normal county taxing mechanisms and turned over to the district for its use.

The District and the Bureau anticipate an increase in ad valorem tax revenues as follows according to project documents: (see next page).

DAM SAFETY

All quadrants of the Ridges Basin Reservoir site have been mined. There are six mine extractions in the vicinity of the dam site. These could be stops, shafts, or lateral tunneling, as the coals are contained within many levels of the various formations. Miners still alive in the area could possible shed some light on what could be found underground. Incredibly, even with recent mining activity, the state mining engineer does not have these underground surveys. The little the engineer had has long been discarded. Just as incredible is the fact that these mine workings are not included in the USBR documents. USBR reports are unavailable.

One of the mines, Carbonero #67, began to burn in the 1920's. This underground fire burned for a period of years and could conceivably still be burning as there have been sightings of wintertime steam vents in the area. Carbonero, which opened in 1870 and operated for more than 50-years, caved in circa 1928, causing what was referred to locally as "moving mountain", a slide involving more than 40 acres of land on the north side of Carbon Mountain opposite the north or right abutment of the dam, which is on the south side of Carbon Mountain. The geometry of the materials of the slide demonstrate the instability of the mountain, in that the slide is uniform.

The coal seam there is thick--80 feet--and extensive. The existence of this mine, the extent of the coal seam, and the number of years of mining, however, were not mentioned in either the EIS or the DPR.

The extent of the drifts into Carbon Mountain is unknown. The phrase "...minor exploratory openings would be back-filled and sealed off" mentioned in the EIS refers to a mine on the north side of Ridges Creek which is the location for the right abutment of the dam. The mine opening here should be the opposite side of the Carbonero coal of the Fruitland Formation. A mine exploratory would indicate the presence of a very thick sequence of very soft coal

Estimated ad valorem tax revenues
from the La Plata Water Conservancy District in Colorado
(Unit—$1,000)

Calendar year of assessed valuation	Year of study	Historical and projected assessed valuation: Existing district	Historical and projected assessed valuation: County	Year of collection and availability: Calendar year	Year of collection and availability: Year of repayment study	Revenues at ½ mill: Annual	Revenues at ½ mill: Total for period
1956		1,559					
1957		1,523					
1958		1,610					
1959		1,811					
1960		1,999					
1961		2,238					
1962		2,236					
1963		2,222					
1964		2,133					
1965		2,133					
1966		2,122					
1967		2,090					
1968		1,852					
1969		2,064					
1970		2,058					
1971		1,969	44,415				
1972		2,114	46,909				
1973		2,058	52,309				
1974		2,090	58,886				
1975		2,194	67,722				
1976		2,493	83,894				
1977		2,783	91,116				
1978		1/50,000					
1979		53,000					
1980		56,180					
1981		59,551					
1982		63,124					
1983		66,911					
1984		70,926					
1985		75,182					
1986		79,692					
1987	1	84,474		1988	1	42.2	42.2
1988	2	89,542		1989	2	44.8	44.8
1989	3	94,915		1990	3	47.5	47.5
1990	4	100,610		1991	4	50.3	50.3
1991-2000	5-14	125,625		1992-2001	5-14	62.8	628.0
2001-2010	15-24	185,956		2002-2011	15-24	93.0	930.0
2011-2020	25-34	275,260		2012-2021	25-34	137.6	1,376.0
2021-2030	35-44	407,452		2022-2031	35-44	203.7	2,037.0
2031-2043	45-57	642,501		2032-2044	45-57	321.3	4,176.9
Total (rounded)							9,333.0

1/ Value of expanded conservancy district estimated at $50,000,000 in 1978 containing thin partings of clay-sand within the high water line contrary to the Bureau's claims. ("WILL IT HOLD WATER," report by Marvin E. Smith)

The structure of Ridges Basin Dam site consists entirely of unconformable cretaceous strata. The Durango Anticline is folded near the site and the monocline is flexed, being broken and deformed at six locations along a somewhat continuous faulting. One fault is directly under the location of the proposed Durango Pumping Plant where it splits into two separate segments. One goes directly into the north northeast flank of Carbon Mountain, adjacent to the slide. This segment splits at a point 1/4 mile south-southwest of the plant, where it cuts west across the north saddle to Carbon Mountain. There it joins a sibling fault. The fault then traverses southwest along and through the mid-section of the reservoir, upthrusting 15 to 45 feet on the north side.

The General Geology Map is insufficient and inaccurate. (See, for example, USBR E.I.S. page B-24 and DPR, page 40.) The statement, "A pattern of fault planes lies subparallel to a ridge through the reservoir basin and dam site but there has been no active faulting in recent times," does not square with the EIS's assertion on page B-26. Not all of the faults are mapped, and the mapping of the faults that is available is inaccurate. For example, the fault within the basin is downthrown on the south side, not on the north as shown on the EIS map page B-24.

The sandstone strata are highly permeable. Thus, the latter fault is probably a direct conduit to the subterranean sandstone formations. These sands are local sources of supply of water and hydrocarbons. The Pictured Cliffs, Cliff House, and Point Lookout (all sandstone formations), are favorite zones in the San Juan Basin. Thus the water will probably disappear into the Cliff House and Point Lookout sands as fast as the Animas La Plata can bring the water into the reservoir.

The United States Geological Survey clearly defines a fault zone right under the siting of the Durango Pumping Plant. The reservoir segment of the fault series cuts the reservoir area in half. The width of the fault zone there is varied; to seal it to ensure that there will be only "minor seepage" would be very expensive.

WATER RIGHTS (Durango)

According to a report undertaken by the consulting firm of Black & Veatch for the city of Durango in 1981, the city owns or is availed of both direct flow rights and storage decrees for waters from the Florida River. Waters subject to the direct flow rights are diverted at the river intake and conveyed through the Durango City Pipeline to the Terminal Reservoir. The absolute direct flow decrees are as follows:

Appropriate Date	Adjudication Date	Amount cfs	1978 Basin Rank	Rank on FL River
3/27/1877	11/8/1923	3.250	16	1
7/15/1877	11/8/1923	1.000	19	2
4/15/1878	11/8/1923	2.920	22	3
7/15/1878	11/8/1923	1.000	28	6
6/1/1881	11/8/1923	0.083	48	11
6/15/1881	11/8/1923	0.167	49	12
5/1/1885	11/8/1923	0.500	71	18
		8.920		

The report goes on to indicate that the storage decrees are related to reservoirs and/or reservoir sites in the City's Watershed Grant. The decrees are absolute but inactive and are as follows:

Appropriation Date	Adjudication Date	Amount a/f	1978 Basin Rank
6/8/1899	3/21/1966	2,220	246
6/8/1899	3/21/1966	570	246
6/8/1899	3/21/1966	42	246
6/8/1899	3/21/1966	246	246
		3,078	

With respect to the Animas River, the Black & Veatch Report indicates the City has direct flow rights for waters in the Animas River. Some of the decrees are absolute, others are conditional. The direct flow rights on the Animas River diverted through the Animas River Pumping Station and Force Main which are absolute decrees are as follows:

Appropriation Date	Adjudication Date	Amount cfs	1978 Basin Rank
6/15/1874	11/8/1923	1.000*	4
5/1/1878	11/8/1923	0.330*	23
2/3/1883	3/21/1966	6.000	238

* Owned by the South Durango Water District but assigned to the City for use.

Direct flow rights on the Animas River diverted through the Animas River Pumping Station and Force Main which are conditional decrees are as follows:

Appropriation Date	Adjudication Date	Amount cfs	1978 Basin Rank
2/3/1883	3/21/1966	41.000	238

Direct flow rights on the Animas River that are conditional and are diverted through the facilities indicated are as follows:

Facility	Appropriation Date	Adjudication Date	Amount cfs	1978 Basin Rank
West Side Pumping Station	2/3/1883	3/21/1966	2.000	238
Memorial Park Pumping Station	2/3/1883	3/21/1966	1.000	238
			3.000	

The indications are that Durango has a 50 cfs conditional water right on the Animas River which could be used to develop their future M&I water supply. It should be remembered that Durango's City Pipeline's capacity is 8.92 cfs.

WATER RIGHTS (Indians)

According to the Final Settlement Agreement of December 10, 1986 on the Colorado Ute Indian Water Rights, the general purpose of the Agreement is:

1. the settlement of existing disputes or future controversies concerning the Tribes' right to beneficially use water in southwest Colorado;
2. the settlement of the litigation filed by the United States on behalf of the Tribes in the Colorado District Court for Water Division No. 7;
3. the enhancement of the Tribes' opportunities to derive an economic benefit from the use of their reserved water rights;

4. the enhancement of the Tribes' ability to meet their repayment obligations under the Agreement; and

5. the authorization for the Tribes to sell, exchange, lease or otherwise temporarily dispose of their water.

Indian water rights are based on the Winters Doctrine of Federal Reserved Water Rights, Winters v. United States, 207 U.S. 564 (1908), holding that when the United States reserved land for the Indian reservations, it also implied reserving sufficient water rights to fulfill the purpose of the reservation. In subsequent interpretative decisions, courts have based reserved rights on the number of acres in the reservation that can be irrigated and farmed productively. A number of cases are pending in state and federal court to determine whether municipal, industrial, energy development and other uses are included in those reserved rights.

Southern Ute and Ute Mountain Ute claims to water in the Animas, La Plata, Florida, Pine, Mancos, and Dolores rivers in Southwestern Colorado have not been quantified by any court. In the Animas La Plata Project the Bureau of Reclamation provided estimates for irrigation and mineral resource development water needs.

With respect to the Tribes participating in the Animas La Plata Project the following should be understood:

NAVAJO NATION

Although the Navajo Tribe is shown as receiving 7,600 acre-feet of water from the Animas La Plata Project, they have not participated in the Indian Water Rights Settlement. Furthermore, according to the legal assessment of Durango's water rights in a study done by the law firm of Moses, Wittemyer, Harrison and Woodruff, the Navajo Tribe has no claim to the Animas or the La Plata rivers for the following reasons:

1. Neither river flows through the Navajo reservation as required by the Winters Doctrine.

2. The Navajo Irrigation Project provides substantial water for irrigation. In giving their support to the project the Navajo's signed an agreement that the Navajo Irrigation Project water supply would satisfy their claims in the upper reaches of the San Juan River and its tributaries.

UTE MOUNTAIN UTES

The current population figures show that there are fewer than 1500 Ute Mountain Utes living on the reservation located in Southwestern Colorado and Northern New Mexico. The Tribe is to receive 25,600 acre-feet of water for irrigation and 6,000 acre-feet for municipal and industrial water from the Animas La Plata Project.

According to the Winters Doctrine they do not have a claim on either the Animas or La Plata Rivers since those rivers do not cross their reservation. The Ute Mountain Utes do have a claim on the Mancos River. The Dolores project, built to relieve the Indian claims on the Mancos River, provides the Tribe with 22,900 acre-feet for irrigation and 1,000 acre-feet of water for municipal and industrial purposes. However, the Tribe has not signed a contract for the available water.

Additional sources of water are available to the Ute Mountain Utes. The Dolores project has excess water for sale. A study done by the Soil Conservation Service shows that 10,000 acre-feet of water can be saved by lining ditches and other salinity control measures used in the Mancos Valley. Additionally, 40,000 acre-feet of savings is available if salinity measures are used in the McElmo project.

SOUTHERN UTES

Current population figures show approximately 1050 Southern Utes living on the reservation in Southwestern Colorado. The Tribe has legitimate claims on both the Animas and La Plata rivers. Under the current Animas La Plata Project design the Southern Utes receive 3,300 acre-feet of water for irrigation and 26,500 acre-feet for municipal and industrial purposes, an allocation determined by the Bureau of Reclamation. Additionally the Southern Utes have water rights on the Pine River project providing 21,616 acre-feet of water. Another 213 cubic feet/second is available from direct flow rights on the Pine River. The Florida Project provides 2,000 acre-feet in Lemon Reservoir for irrigation.

WATER RIGHTS (La Plata River)

According to the Definite Plan Report, in Colorado, direct flow water rights totaling 601 cfs for 21 ditches diverting from the main stem of the La Plata River have been adjudicated for the irrigation of 20,100 acres of land. Of this amount approximately 273 cfs of water rights are for diversions above the proposed La Plata Diversion Dam. The Red Mesa Ward Reservoir Company has a storage right for

1,176 acre-feet, the present capacity of its reservoir.

In New Mexico direct flow water rights totaling 123 cfs for 14 ditches diverting from the La Plata River have been adjudicated for the irrigation of 5,500 acres of land.

WATER RIGHTS (Animas River)

Essentially all irrigable land in Colorado and New Mexico along the Animas River receives a partial water supply from the river and has done so for many years according to the DPR. Above the proposed Durango Pumping Plant, there are a total of 300 cfs of direct flow and 650 acre-feet of storage rights prior to the project rights and 123 cfs of direct flow and 3.7 acre-feet of storage rights subsequent to the project rights.

Below the pumping plant there are 61 cfs of direct flow rights in Colorado and 599 cfs of direct flow rights and 6,574 acre-feet of storage rights in New Mexico prior to the project rights. Subsequent to the project rights, there are 149 cfs of direct flow and 642,800 acre-feet of storage rights in Colorado and 7,200 acre-feet per year of direct flow and 672 acre-feet of storage rights in New Mexico. There are 21 ditches in Colorado and 20 ditches in New Mexico with rights prior to the project rights.

PROJECT WATER RIGHTS

In the adjudication of 1966, the Southwestern Water Conservation District obtained water rights from the Animas and La Plata Rivers in Colorado Water Division No. 7 for project use according to the DPR. Both storage and direct flow rights were acquired with an assigned priority date of September 2, 1938. The water rights will be transferred from the Southwestern Water Conservation District to the Animas La Plata Water Conservancy District after the latter District's boundaries are extended to include the entire prject service area in Colorado. The rights are based on the project plan at the time of authorization and would be modified to correspond to the present plan. The Durango service area has an absolute direct flow water right prior to the project's rights of 19.25 cfs, 8.92 cfs of which are on the Florida River and 10.33 cfs on the Animas River according to project documents. The service area also has conditional direct flow water rights prior to the project of 44 cfs and succeeding the project of 4.20 cfs. The Durango service area would subordinate a total of 41.75 cfs of its water rights to the project. The service area will retain the 8.92 cfs right on the Florida River and a total of 16.78 cfs on the Animas River.

According to the Water Supply Appendix of the Definite Plan Report:

> The usable existing water supply of the Durango Service area is constrained by Florida River dry year flows and the city of Durango's 12-mgd treatment plant capacity (since expanded). To convey Animas River water to the exisitng treatment facilities requires considerable energy costs because of the 430-foot elevation difference between the river at the pumping plant and the treatment plant. Because of the high pumping costs, the city of Durango is planning to only use the 16.78 cfs of Animas River water for irrigation and emergencies. Use of these rights by Durango would be limited by contract to the summer months to minimize their effect on the project (emphasis added). Total demand under project conditions would be met by using the Florida River as a base supply which would continue to be treated at the existing Durango treatment facility. This supply would be supplemented from the Animas La Plata project to meet peak demands. Treatment of project water for the Durango service area would be at a treatment plant which would be constructed near Ridges Basin Reservoir by the Conservancy District according to project documents. The usable existing base supply of the Durango service area from the Florida is 5,600 acre-feet.

ALTERNATIVES: THE TAX PAYERS PERSPECTIVE

Presented with a $535 million dollar project that benefits 179 farmers and with the likelihood that a population of 12,000 will have to pay for the energy and water supply of a population of 38,000, the taxpayers of the Durango water district are understandably in an uproar. The project has prompted the taxpayers to organize into a coalition called Taxpayers for an Animas La Plata Referendum. The coalition's members reside within the proposed boundary which will be the local taxing, governing body that will enter into a contract with the Federal Government concerning the Animas La Plata Project.

The project has been marketed by the USBR as a way to settle long standing Indian water disputes, to meet increased demand for water, and to bolster the local economies of Durango, Farmington, and the surrounding communities.

Kenny Beck, a USBR economist, has spoken to farmers at local Grange meetings. "Some time, some day, it's going to swing back," Mr. Beck declared, a promise that farming is going to become profitable again in the future. "It's like an ol'boy told me about the cattle business," said Beck, standing under the American flag. "If you're in this business, you've got to ride it through the ups and downs." Mr. Beck needs to reevaluate the nation's farming economy and the problem of oversupply.

The area to be irrigated in the region suffers from a short growing season, a surplus of cheap alfalfa produced by the nearby Navajo Irrigation project, distant markets, and unsuitability for sprinkler irrigation (due to broken and hilly terrain). The most limiting factor, however, may be the irrigators' reluctance to sign up for project water.

The USBR's "no project alternative" declaration reads: "The net result of no project alternative would be for agriculture igating one acre of land as $5,808.00. The high cost reflects the cost of pumping all irrigation water 900 feet uphill. Anyone foolish enough to sign up for project water will surely suffer the same fate as the full-service farmers in the nearby Dolores project who are suing the USBR to be relieved of their contract obligation, knowing they will lose their land if forced to take water they cannot afford.

Some Indian water rights advocates claim that Animas La Plata would settle the Indian claims on the San Juan River and its tributaries.

This is a gross oversimplification of a complex problem. Indian water rights claims in the San Juan Basin are not limited to the two small Ute Tribes in Colorado. Ute tribal claims on the San Juan and its tributaries arise from the so-called Winters Doctrine (see p.52, infra), a federal court decree issued in 1908 which says that the Utes have a right to "adequate" water for their reservation lands. No one knows what "adequate" means. Tribal officials say publicly that Animas La Plata would settle this claim on the river; privately they admit that this is a con job.

The cost to the Southern Ute people, if the Animas La Plata project is built, amounts to $5,000 per year per tribal member. The tribe has had less than a thousand members for fifty years. This large water bill will severely cut into any profits the tribe would derive from development of the reservation's extensive coal resources.

PROJECT ALTERNATIVES

(Scenario 1): The Black & Veatch Report

In reviewing documents for this report EPI found that the city of Durango had requested the consulting firm of Black & Veatch to review the city's existing water system and proposed plans and make a set of recommendations concerning future needs.

One of the main recommendations made in the consultant's report was that:

> " a storage capacity of 1,050 acre-feet (substantially less than the 8,200 acre-feet per year contemplated in Animas La Plata Project documents). It should not be necessary for the City to pay for more water than it will need; therefore, this term of the repayment contract between the City and the Animas La Plata Conservancy District should be renegotiated in light of the City's projected storage needs as determined by Black & Veatch."

With respect to Durango's M&I needs, according to Black & Veatch:

> " The Animas La Plata Project, as presented by the USBR, is more costly for the City than other alternatives. One alternative, using only part of the Project facilities and utilizing existing City facilities and water rights, is less expensive than the Project. Another alternative, utilizing City facilities and rights exclusively and expanding some of those facilities, is the least expensive for the City while providing flexibility of action in case the population growth is not as great as estimated."

The Report continues:

* For a number of reasons, the City's Animas River rights, if properly perfected and adjudicated as final decrees, will constitute firm rights, and there should be adequate water in the Animas River even under low flow conditions to satisfy those rights. The City should take action to perfect these rights and to secure adjudicated final decrees.

* If the City participates in the Animas La Plata Project, it should not agree to conform or limit its Animas River decrees to any bypass conditions of

Animas River flows at Durango.

* Regardless of City participation in the Animas La Plata Project, the City should pursue development of its Animas River Rights and should expand its existing Terminal Reservoir to assure an adequate water supply.

* If the City decides the benefits of participation in the Animas La Plata Project exceed the costs of participation, the City should request revisions in allocation of Project's costs as now defined to reduce the City's costs and to permit more flexibility in drafting future City water needs from the Project.

* If the Animas La Plata Project is constructed, the effluent from the City's Wastewater Treatment Plant should be conveyed to a point below the Durango Pumping Plant as part of the project, for discharge into the Animas River. Also, the effect of the abandoned uranium mill tailings on the Animas River quality should be thoroughly investigated and, if necessary, corrective action taken as part of the Project.

* If the City decides not to participate in the Animas La Plata Project, it should adopt Alternative 3B as presented in the body of the report and should initiate steps to implement that plan to develop and assure an adequate raw water supply for growth of the City.

(Alternative 3B developed by Black & Veatch calls for Animas River Pumping and Storage System With Alternative Water Demands and 1934 Stream Flow Conditions. This alternative uses lower water demands and the lower summer Animas River flow. The Animas River Pumping Station would be expanded to a firm capacity of 8,000 gpm by 2005, a new 16-inch force main would parallel the existing force main, the City's water treatment plant would be expanded to an 18 mgd capacity by 2005, and the Terminal Reservoir Dam would be raised 20 feet by 1990 and another 10 feet by 2010 to increase storage capacity.

The following tables indicate the costs of the alternatives and the expected impact on the residential bi-monthly bill: (see next page).

Alternative	Total Additional Cost 1990-2020 Period	Average Additional Cost Per Bi-Monthly Residential Bill
	$	$
1	6,095	33
2A	4,972	27
3A	3,557	19
2B	2,953	16
3B	1,965	11

The above cost figures take into consideration the increasing number of residential accounts as the service area grows.

TABLE 9-7

COMPARISON OF TOTAL ANNUAL COSTS

YEAR	ANIMAS-LA PLATA	MODIFIED ANIMAS-LA PLATA		ANIMAS RIVER P.S. & STORAGE	
	ALT. 1	ALT. 2A	ALT. 2B	ALT. 3A	ALT. 3B
	$1000	$1000	$1000	$1000	$1000
1990	835	981	407	413	210
1995	835	1,909	407	1,518	210
2000	3,682	2,594	711	1,728	210
2005	3,773	2,621	1,521	1,777	1,069
2010	3,924	2,648	1,534	1,946	1,294
2015	4,014	2,830	1,547	2,156	1,108
2020	4,101	2,157	1,561	1,618	1,134
2025	2,146	2,157	1,561	1,618	1,134
2030	2,146	2,157	958	1,618	533
2035	2,084	2,157	958	1,498	331
2040	1,346	1,132	593	1,254	331
2045	1,346	1,132	593	1,254	331
TOTAL OF ANNUAL PAYMENTS	$151,880	$122,704	$61,837	$93,655	$39,622

(Scenario 2): Elimination of Irrigation Uses

If Irrigation were omitted as a project purpose, Durango Pumping Plant and Ridges Basin Inlet Conduit could be reduced in size from 430 to 75 cubic feet per second (cfs). Ridges Basin Pumping Plan could be reduced from 710 to 70 cfs. All specific irrigation facilities including Red Mesa, Alkali Gulch, Ute Mountain, Southern Ute, and Third Terrace Pumping Plants and Transmission Lines, New Mexico Irrigation Canal, and all laterals and drains could be omitted. The future year capacity cost could also be omitted. The reduction in cost resulting from elimination of irrigation as a project purpose is estimated at $157, 970,000 construction ('79 dollars), $8,713,000 interest during construction, and $1,127,000 annually in operation, maintenance, and replacement costs. These costs are all separable to irrigation.

(Scenario 3): Ridges Basin Reallocation

According to the Bureau of Reclamation documents, the most likely set of facilities to develop municipal and industrial water in Colorado without the project would be a 25,000 a/f Ridges Basin Reservoir, which would be the storage reservoir for all Colorado users. The reservoir would be filled by the potential Drive-In Pumping Plant located about 2 miles downstream from the location of the planned Durango Pumping Plant. Durango water would then be pumped from the reservoir by the municipal and industrial Durango Pumping plant to a point 2 miles to the north where a proposed treatment plant would be located. From here, the water would be conveyed 3 miles to the north end of Durango.

Water for the Ute Mountain Utes and La Plata Drainage in Colorado would be pumped west by the Ute Mountain Ute Pumping Plants #1 and #2 and conveyed by the Ute Mountain Ute Pipeline to the Ute Mountain Ute Indian Reservation. La Plata rural water would be provided near where the pipeline crosses the La Plata River.

Southern Ute Indian municipal and industrial water would be provided in the Animas River, with releases from Ridges Basin Reservoir when the riverflows would be insufficient. Water would be diverted just below the potential Drive-In Pumping Plant into a potential Southern Ute municipal and industrial canal which would convey the water to the McDermott area, on the east side of the coal field.

New Mexico water would be pumped by a potential Aztec Pumping Plant from the Animas River into a potential 12,000 a/f Aztec Reservoir, north of Aztec. Water would then be released as needed back to the Animas River when riverflows would be insufficient to meet demands.

The investment for this proposal was amortized at 7 percent over 30 years. The interest rate and period were determined by the Regional Office, based upon the bonding capability of typical cities in the region. The annual M&I benefits based upon the alternative source of water for the users without the project and that used in most plan formulation studies, are $8,100,000.

(Scenario 4): Use of New Mexico M&I water; Federal mediation possibility

Another possibility to be explored would be to provide 87,300 acre-feet of water to industrial water users. This would result in a plan similar to the M&I plan discussed above, except that New Mexico M&I water would also be included in Ridges Basin Reservoir. The assumption here is that a middleman, the Federal Government, could get all the users to cooperate in building and operating common facilities. It is unlikely that such cooperation could be achieved otherwise.

Animas River water would be pumped into a small Ridges Basin Reservoir (50,000 a/f, 850-acre water surface, 155-foot high, 1,000-foot crest length) by a potential 70-cfs Drive-In Pumping Plant located about 3 miles downstream from the location of the proposed Durango Pumping Plant. New Mexico M&I water and Southern Ute M&I water would be served by releases from Ridges Basin Reservoir to the Animas River when the riverflows would be insufficient to meet demands. New Mexico M&I water would flow downstream to be picked up by users in New Mexico. Southern Ute M&I water would be diverted into a 40-cfs Lower Animas Canal and conveyed 20 miles southwest to the coal resource near McDermott Arroyo.

Durango M&I water would be pumped by a 37-cfs Durango M&I Pumping Plant from Ridges Basin Reservoir, north 2 miles to a proposed treatment plant. From the treatment plant the treated water would be piped 3 miles to the northern side of Durango by the potential Durango Pipeline.

The Ute Mountain Ute Indian M&I water and rural M&I water for the La Plata River Drainage in Colorado would be pumped west by the potential 14-cfs Ute Mountain Ute Pumping Plants #1 and #2 from the reservoir. The Ute Mountain Ute Pipeline would carry the water 23 miles to the Ute Mountain Ute Indian Reservation boundary. The rural water for the La Plata River Drainage in Colorado would be released from the pipe near the La Plata River.

The list of the features is shown on the following Table along with the estimated construction costs. The total estimated construction cost is $67 million plus $4 million of interest during construction yields, a total investment of $71 million. The estimated annual operation, maintenance, and replacement cost is $440,000, of which $240,000 is to provide 36,000,000 kilowatt-hours and 88,000 kilowatt-months per year for pumping.

The estimated potential benefits are $8,100,000. There would be no appreciable recreation or fish and wildlife benefits associated with this level of development. The benefit-cost ratio is 2.70 to 1.

(Scenario 5): Expand Irrigation of Indian Lands

If irrigation to full service Indian Lands were added to this alternative, sprinkler irrigation service to 12,000 acres of full service Ute Mountain Ute Indian land and 1,800 acres of full service Southern Ute Indian land could be provided. The Southern Ute Indian land is scattered among non-Indian land and cannot practically be served without serving non-Indian land; a water supply would be provided for the land but laterals to serve the land could not be provided.

The major facilities used to provide water in this alternative are similar in the plan of development, only smaller in size. Most of the facilities in the municipal and industrial water only alternative would not be the most efficient if irrigation water were added.

Under this plan, Animas River water would be pumped by a 150-cfs Durango Pumping Plant into the potential Ridges Basin Reservoir (175,000 acre-foot, 1,750 acre water surface, 250-foot high, 1,250-foot crest length). Durango M&I water would be released from Ridges Basin Reservoir north to a treatment plant (already built) and then conveyed 3 miles to Durango by the potential Durango Pipeline. New Mexico M&I water would be released back to the Animas River when there would be insufficient water in the river to meet demands in New Mexico.

Southern Ute and Ute Mountain Ute M&I and irrigation water plus the rural M&I water for the La Plata River Drainage in Colorado would be pumped out of the West side of Ridges Basin Reservoir by a 240-cfs Ridges Basin Pumping Plant. Water would then be pumped into a 240-cfs Dry Side Canal then conveyed 35 miles west to the Ute Mountain Ute Indian Reservation. Southern Ute M&I water would be released into the La Plata River, then diverted into Southern Ute Reservoir (70,000 a/f, 1,240 acre water surface, 162 foot high, 2,300 foot crest length) by a 375 cfs Southern Ute Diversion Dam and Inlet Canal.

The total construction cost for this alternative is estimated at $164 million and interest during construction would be about $11 million for a total investment of $175 million. The annual operation, maintenance, and replacement costs would be about $1,020,000 of which $550,000 would be to provide the 105,000,000 kilowatt-hours and 140,000 kilowatt-months per year for pumping.

The benefits associated with this level of development are estimated at $2,000,000 for irrigation, $8,100,000 for municipal and industrial, and $400,000 for recreation and fish. The total benefits are estimated at $10,500,000. The benefit/cost ration would be 1.50 to 1. A comparison of these alternatives follows on the next page.

CONCLUSION

> ...Of course, Felix Sparks, like a lot of western farmers, didn't believe in such a thing as federally subsidized water. "This business of federal Reclamation subsidizing irrigation water," he snorted, is absolute, utter, unmitigated crap."
>
> Subsidy, however, was exactly what Aspinall's and Spark's five projects would require, subsidy on a scale that made even the Bureau cringe. It fell to Dan

Comparison of alternative levels of development

	M&I water only	M&I plus service to Indian lands	M&I plus service to Indian and supplemental lands1/	Plan of development
Acres served	0	13,825	34,950	67,700
Water supply (advance planning)				
Irrigation	0	29,600	84,900	115,000
Municipal and industrial	87,300	87,300	87,300	87,300
Total	87,300	116,900	172,200	202,300
Colorado River Storage Project (advance planning)	58,000	81,000	130,000	154,000
Construction cost	$67,000,000	$164,000,000	$194,000,000	$280,000,000
Interest during construction	4,000,000	11,000,000	13,000,000	20,000,000
Total investment	71,000,000	175,000,000	207,000,000	300,000,000
Annual costs				
Amortized investment	2,404,000	5,928,000	7,010,000	10,165,000
Operation, maintenance, and replacement costs2/	440,000	1,020,000	1,570,000	2,040,000
Colorado River Storage Project charge	116,000	162,000	260,000	310,000
Total	2,960,000	7,110,000	8,840,000	12,515,000
Annual benefits				
Irrigation (total)		2,000,000	4,140,000	8,500,000
Municipal and industrial	8,100,000	8,100,000	8,100,000	8,100,000
Recreation		300,000	300,000	300,000
Fish and wildlife		100,000	100,000	100,000
Total	8,100,000	10,500,000	12,640,000	17,000,000
Economic analysis				
Net annual total benefits	5,140,000	3,390,000	3,800,000	4,485,000
Benefit-cost ratio	2.70:1	1.50:1	1.40:1	1.35:1

1/ The supplemental lands are gravity irrigated through existing ditches.
2/ Includes power.

> Dreyfus, the Bureau's house magician, to invent enough benefits to make them pass muster. "Those projects were pure trash," said Dreyfus in an unusually candid interview in 1981, as he prepared to retire from public service. "I knew they were trash, and Dominy knew they were trash. The way they got into the bill was, Aspinall called up Udall one day and said, 'No Central Arizona Project will ever get by me unless my five projects get authorized, too.' When Udall passed the word on to us, we were appalled. The Office of Management and Budget had just bounced Animas-La Plata. Now we had to give it back to them and make them reverse themselves. I had to fly all the way out to Denver and jerk around the benefit-cost numbers to make the thing look sound."
>
> Marc Reisner, Cadillac Desert, 1986

The review that the Environmental Policy Institute has undertaken on the Animas La Plata project raises the following concerns:

1. There is a fundamental need for a Supplemental Definite Plan Report for the project now that it has been divided into a Phase 1, Phase 2 structure.

2. There is a need for a new Environmental Impact Statement. The best information we could obtain from all the main reports we reviewed is essentially ten years out of date. Even these ten-year-old documents raised crucial issues that were never adequately addressed by the Bureau of Reclamation. In addition, dividing the project into a Phase 1 and Phase 2 is a major change in Federal action which should necessitate such a new Environmental Impact Statement. Furthermore, the enactment of major new laws such as the Safe Drinking Water Act, the Clean Water Act, thet Colorado River Salinity Control Act amendments) has imposed requirements that have not been addressed in the project documents. EPI also feels the discussion in the EIS concerning the uranium mill tailings was deficient.

3. The economic viability of the project which was questionable from the start needs to be reexamined under current economic criteria and to determine that in light of the Phase 1 and 2 approach whether an economically viable project can be constructed by the Federal government.

4. There was no detailed discussion on the M&I plans of the Ute Mountain Utes and the Southern Utes in the project documents other than of a speculative nature. With an interest in selling or leasing their water out of state such additional information would be useful in evaluating whether this would necessitate the construction of the Animas La Plata project or could be accomplished by other non-structural means.

5. Since the completion of project documents, an upgrading of Durango's treatment plant has taken place. This upgrading and its associated use has an impact on future needs and costs associated with the construction of the project. The relationship of this plant with the area's associated water quality problems and construction of new treatment plants needs further examination with respect to the design and operation of the proposed Animas La Plata project.

6. Since the completion of project documents, the city of Durango has undertaken its own independent review of the area's future water needs (Black & Veatch report) which has raised serious questions on Durango's water needs vis-a-vis the Animas La Plata project. This information should be incorporated into any construction plans to meet the future water needs of the area.

7. The irrigation (agricultural) economy of the area and the repayment capacity of farmers has radically changed (for the worse) since the 1970's when the earlier studies for the project were undertaken. A new ability-to-pay analysis needs to be undertaken by the Bureau of Reclamation along with a serious review of the economic future of irrigated and dryland farming in the area to ascertain whether the Federal government should be constructing such capital intensive projects in the first place without a realisitic economic base.

8. New questions are being raised about impacts on endangered species in the Basin area if this project is constructed. Further investigation of these questions should take place.

9. Now that the project has been divided into a Phase 1 and 2, the fish and wildlife mitigation that was to have been undertaken is in question. Before construction begins on this project or a suitable alternative, these questions need to be addressed in a manner that puts fish and wildlife on equal terms with development intentions.

10. The cultural resources recovery program that was to have been undertaken is also in question as a result of the Phased approach. There is also a legal questions on whether proper authorization for the increased financial allocation for recovery has been granted.

11. Recreation for the project has been scaled back as a result of the Phased approach and has not been properly evaluated in terms of the impact on the area's recreational needs.

12. New concerns are being raised over the safety of the site of the Ridges Basin Reservoir. An independent review of the site should be undertaken before the project proceeds into the construction phase.

13. Given the questionable benefits of the project, the tremendous amount of energy involved in moving the project water raises questions on whether this is the best use of a water resource that might be more beneficially put to use elsewhere.

14. There is very little job impact or job creation for the Indians and non-Indians in the project area as a result of building this project.

15. Alternatives which would better address the economic, environmental, and social climate were never seriously considered. The alternatives that EPI has outlined should be more thoroughly reviewed in light of their apparent cost-effectiveness and lessening of environmental damage.

In conclusion, the Environmental Policy Institute strongly recommends that this project go back to the drawing board. The Institute recognizes the tremendous political momentum which has built up as a result of reaching an Indian Water Rights Agreement. The Institute would caution that such momentum should not serve as the guiding force in driving a project beset with the extensive conflicts which have been outlined in this report.

5. INDIAN CLAIMS (Black and Veatch Report)

5.1 Indian Water Rights - General Background

There are three Indian reservations downstream from Durango on the Animas, Florida and San Juan Rivers. These are the Navajo Reservation, the Ute Mountain Ute Reservation, and the Southern Ute Reservation. The Animas and Florida Rivers flow through the Southern Ute Reservation and the San Juan River flows through the Navajo and Ute Mountain Ute Reservations. The Indian tribes may have substantial claims, as yet unquantified, to water in these rivers, which claims could affect the water rights of Durango.

The Doctrine of Federal Reserved Water Rights, or the "Winters Doctrine" as it is named after the case of Winters v. United States, 207 U.S. 564 (1908), holds that the United States, when it reserved lands for Indian reservations, impliedly reserved sufficient water rights to fulfill the purposes of the reservation. In the most recent case in which the United States Supreme Court has addressed the subject of Federal reserved water rights, the Court recognized that there are many unanswered questions with respect to the scope of the implied reservation doctrine but reaffirmed the principle that the amount of water is determined by the purpose of the reservation. Further, the implied reservation of waters for the use of the Indians is asserted to have been intended to satisfy not only present uses, but future needs of the Indians as well.

In order to evaluate the effect of Indian claims on the water supply of the City of Durango, some prediction of the quantity as well as the priority of the Indian rights must be made. With respect to priority, the cases have generally held that the priority date of the federally reserved Indian rights is at least the date of creation of the reservation.

The quantity of water reserved by the Federal Government for use on Indian reservations is the crucial unanswered question. The case which has gone farthest toward developing a formula for quantification of Indian reserved water rights is Arizona v. California, 373 U.S. 546 (1963). There the rights of five Indian reservations to water from the mainstem of the Colorado River were quantified. There the Court found that the purpose of the reservations was to enable "the Indians to develop a viable agricultural economy." Therefore, the measure of the water rights reserved was at an "amount of water necessary to irrigate all of the practicably irrigable acreage on the reservation." The amount of "practicably irrigable acreage" was determined in Arizona v. California using then-current Bureau of Reclamation standards. It is therefore recommended that Bureau of Reclamation quantifications of irrigable acreage be used for planning purposes. This is discussed in more detail for the Southern Ute claims in Section 5.4.

Agriculture may not be the only purpose of the reservation. The extent to which the practicably irrigable acreage test will be applied to quantify Indian reserved rights in the future remains to be seen. Since it is the purpose of the reservation which controls, the practicably irrigable acreage test will apply only where it can be found specifically that the purpose of the reservation was to provide for Indian development of an agricultural economy. Unfortunately, the purposes for a reservation were seldom spelled out with any specificity by Congress in the documents creating the reservations. Courts, therefore, will consider a number of factors, including the circumstances surrounding the creation of the reservation, and the history of the Indians involved. In addition, it must be assumed that the government intended to deal fairly with the Indians, and therefore documents creating reservations and treaties with the Indians are to be construed liberally for the benefit of the Indians. Since the general purposes of a reservation are to be liberally construed, the argument has been made that waters were impliedly reserved for a wide range of uses, including municipal, industrial and recreational. While there has not yet been a case expressly finding an Indian reserved water right for energy and mineral resource development, or developing a formula for quantification of such claims, there are a number of cases pending in state and federal courts in which Indians are claiming reserved water rights for a wide variety of uses, including the Southern Ute Indian claims discussed below. For planning purposes, the quantification of the Indian water rights for resource development should be based on quantities actually required for that development. Here again the best presently available information would be the estimates provided by the Bureau of Reclamation.

The impacts of the claims of the three reservations on the water supply of the City of Durango are discussed separately in the following sections.

5.2 Navajo Claims

There presently are large quantities of water dedicated to the Navajo Indian Irrigation Project (NIIP) amounting to one-third of New Mexico's total share of the Colorado River Basin water. There may be substantial Navajo claims to additional San Juan Basin water which are presently unquantified. However, these claims are not likely to directly affect Durango's water supply for the following reasons:

> (1) Under the Upper Colorado River Basin Compact, any Indian uses are charged to the state in which the uses are made. Therefore, to an extent, Colorado users are insulated by New Mexico users whose water supply would be taken by Navajo claims before Colorado users' supplies could be reached.
>
> (2) The NIIP provides substantial amounts of water to the Navajos. In giving their support to the NIIP, the Navajos represented that the water supply made available by the project would satisfy their claims to water in the upper reaches of the San Juan and its tributaries. See testimony of Paul Jones, Chairman of the Navajo Tribal Council, hearings on H.R. 2352, H.R. 2494, and S. 72 before the Subcommittee on Irrigation and Reclamation of the House Committee on Interior and Insular Affairs, 86th Cong. 2d. Sess. 70 (1960).
>
> (3) Neither the Animas nor the Florida Rivers flow through the Navajo Reservation and the Navajos probably could not require deliveries from the Animas when water is available on the San Juan.

There is some possibility of an indirect effect of the Navajo claims. If the Navajo water rights were to be much larger than expected (in terms of consumptive use), to the extent that the water rights of non-Indian New Mexico uses were substantially impaired, New Mexico might seek a reformation of the Upper Colorado River Basin Compact. While such action is possible, based on our review of the compact and the records of compact negotiations, it is our view that such an attempt at reformation is likely to be unsuccessful.

5.3 Ute Mountain Ute Claims

The Ute Mountain Ute Reservation lands are neither appurtenant to nor practicably irrigable from the waters of the Animas River (with the exception of a small segment of the San Juan River which crosses the reservation at the Four Corners). It would also be quite expensive and impractical to develop Animas and Florida supplies for municipal, industrial or other uses on the Ute Mountain Ute Reservation. Therefore, in our view, it is unlikely that the purpose of that reservation included any intent to use Animas or Florida River water and the Ute Mountain Ute claims are unlikely to directly affect Durango's water rights.

5.4 Southern Ute Claims

Since the Animas and Florida Rivers flow through the Southern Ute Reservation, it is probable that the use of water from these rivers will be found to have been intended to fulfill the purpose of this reservation. The resolution of Southern Ute water right claims therefore has the potential of affecting Durango's water supply. The questions to be answered in the assessment of the magnitude of the effects are:

(1) What is the priority of the Southern Ute water rights?

(2) What is the total quantity of the Southern Ute water rights?

(3) From which streams will the Southern Utes take their water?

With regard to priority, it is generally accepted that the priority date of an Indian water right is the date of the creation of the reservation. (See Appendix B.) While Ute lands were initially reserved in 1868, there were a number of changes in the amount of land and various treaties were negotiated. The present boundaries of the reservation were defined in 1890. Although it is probable that the Southern Ute claims will be found to date from the 1868 initial reservation, thereby predating all the water rights of the City of Durango, later reservation dates are arguable which might leave some of the City's rights prior to those of the Indians.

With regard to the total quantity, as discussed in Appendix B, the quantity of the water right associated with an Indian reservation is the amount necessary to fulfill the purpose of the reservation. It is noted that the United States has applied for adjudication of Southern Ute claims, Case No. W-1603-76, Water Division No. 7, State of Colorado. The purposes specified in the applications are stated generally to include all uses necessary to fulfill the purposes of the reservation, including agricultural, municipal, industrial, recreational and a variety of other uses. The claims thus offer little information from which the quantities can be estimated, making it necessary to look to other sources. The Bureau of Reclamation (in preparation for the Animas-La Plata Project) has quantified potential uses by the Southern Ute tribe for both irrigation and mineral resource development. The Bureau has found that the quantity required for irrigation of the practicably irrigable acreage under the Animas-La Plata Project on the Southern Ute Reservation is 3,300 acre-feet per year. The Bureau's estimated quantity needed for mineral resource development is 26,500 acre-feet per year. Initial discussions with attorneys for the United States and for the tribe lead us to conclude that settlement of the claims at the magnitude of the Bureau's quantification, contingent upon construction of the Animas-La Plata Project, is likely. Thus, if the project is built, it is expected that the Southern Ute water rights will be quantified at the above Bureau estimates and that this water will be supplied through project works, leaving Durango's water supply unaffected.

Assuming the project were not built, it is felt that no accurate prediction of the possibility of the Indians' success in asserting rights to quantities of water can be made at this time. Nevertheless, some information is available which can be used as an indication of the possible magnitudes of the quantity of the Southern Ute water rights.

With regard to non-agricultural uses, the Bureau has estimated the potential Southern Ute requirements for municipal and industrial (M&I) purposes to be 26,500 acre-feet per year, which amounts to an average direct flow rate of approximately 37 cfs. This is the estimated M&I requirement for the entire reservation, and so the real question is how much of this amount will come from the Animas or Florida Rivers. Since most of this amount would probably be used for natural resource development, it is difficult to say which rivers the water will come from without knowing the geographic pattern of future Southern Ute resource development. It seems unlikely, however, that any significant portion of this amount would come out of the Florida River. In any case, if a major portion of the Southern Ute M&I water came out of one of the rivers, the other river would be left correspondingly unaffected.

With regard to Southern Ute irrigation, it has been brought to our attention that the tribe will probably claim on the order of 1,500 acres of land to arable from the Florida River. It is also reputed that a relatively large portion of this claimed arable land will be clamed to be "practically irrigable." A rough estimate of the amount of water required to irrigate this much land may be about 3,000 acre-feet per year. It is noted that the tribe is presently being supplied with approximately 2,000 acre-feet per year from Lemon Reservoir. Thus, either a major portion of the Southern Ute irrigation from the Florida River will be supplied out of Lemon Reservoir, or, if the Southern Utes elect to pursue their own irrigation rights on the Florida, 2,000 acre-feet per year of Lemon Reservoir water will be freed up to supply junior rights which may have been displaced by Southern Ute claims.

A thorough analysis of this situation would require a more detailed look at the Florida River hydrology and priority scheme. This is not possible within the scope of the present work. The most significant factor in the assessment of the firmness of Durango's supply on the Florida River is the fact that the major portion of Durango's rights on the Florida are of the highest priority. Thus, any displacement of non-Indian rights by the assertion of Indian claims would occur first to all of the rights junior to Durango's before the City's supply is affected. The unlikelihood of such a drastic occurrence must be taken into account in the assessment of the firmness of Durango's Florida River supply.

(Colorado Attorney General)

BRIEFING PAPER NO. 7: AGREEMENT SUMMARY

Colorado Ute Indian Water Rights

Final Settlement Agreement of December 10, 1986

The Agreement consists of seven articles: general purposes, definitions, quantification and determination, administration, leasing and off-reservation use, finality of settlement, and general provisions.

Article I - General Purposes

This article provides a brief introduction to the document and sets out its general purposes which are: (1) the settlement of existing disputes or future controversies concerning the Tribes' right to beneficially use water in southwest Colorado; (2) the settlement of the litigation filed by the United States on behalf of the Tribes in the Colorado District Court for Water Division No. 7; (3) the enhancement of the Tribes' opportunities to derive an economic benefit from the use of their reserved water rights; (4) the enhancement of the Tribes' ability to meet their repayment obligations under the Agreement; and (5) the authorization for the Tribes to sell, exchange, lease or otherwise temporarily dispose of their water.

Article II - Definitions

This article includes the Agreement's glossary of terms.

Article III - Quantification and Determination

Under the terms of the Agreement, the Ute Mountain Ute Indian Tribe will receive the right to beneficially use 25,100 acre-feet of water from the Dolores Project, 33,000 acre-feet of water from the Animas-La Plata Project, and 27,400 acre-feet of water from the three streams flowing through the reservation. The Southern Ute Indian Tribe will receive the right to beneficially use 29,900 acre-feet of water from the Animas-La Plata Project and over 10,000 acre-feet of water from various other water sources serving the reservation. Both Tribes will receive underground water for individual domestic and livestock uses and will have their current water uses protected.

The water rights secured to the Tribe by the Agreement are called "project reserved waters" or "non-project reserved waters," with the exception of water from the Pine River and a state water right decreed to the Southern Ute Tribe from the existing Florida Water Conservancy Project (these rights are taken as nonreserved water rights or are taken pursuant to earlier decrees). All project and nonproject reserved water rights are subject to the provisions of the Agreement concerning administration (article IV), leasing and off-reservation use (article V), finality (article VI), and general provisions (article VII).

The Agreement identifies specific places of use, times of use, types of use and, to varying degrees, consumptive uses. Stream quantifications were done in a manner which gave the Tribes surplus waters, or waters not yet decreed to or used by existing state appropriators. Dispute concerning the use of these waters will be presented to the Colorado District Court for Water Division No. 7.

The construction of the Animas-La Plata Project and the completion of the irrigation facilities of the Dolores Project are keystones to the water rights settlement because without this additional storage and supply, there is insufficient water to meet the future needs of the Tribes and the current demands of the non-Indian communities. Non-Indian user populations in southwest Colorado and northwest New Mexico receiving benefits from the Animas-La Plata Project have committed to help finance the project. On June 30, 1986, their cost-share commitments were found by the Secretary of the Interior to meet the cost-share requirements set out by Congress in Section IV of Public Law 99-88.

Article IV - Administration

The article governs all project and nonproject reserved water rights used within the boundaries of the reservation. Off-reservation use of the waters is governed by Article V of the

Agreement. The Agreement provides for joint State-Tribal administration of the water rights confirmed to the Tribes. It subjects the on-reservation use of Tribal waters to the requirements of change in water rights proceedings, beneficial use and resolution of disputes in Colorado District Court for Water Division No. 7.

Article V - Leasing and Off-Reservation Use

Subsection A concerns not only leasing but also the sale, exchange or temporary disposal of Tribal waters. The subsection's sole purpose is to overcome the restrictions of the Indian Non-Intercourse Act by allowing the Tribes to temporarily transfer title of their water to third parties. Subsection B addresses the off-reservation use of Tribal waters. It discusses two types of off-reservation use: (1) off-reservation and in-state use; and (2) off-reservation and out-of-state use. For the off-reservation and in-state use of reserved water, the Tribes agree to comply with all of the state laws, federal laws and interstate compacts that other non-Indian water users must comply with. For off-reservation and out-of-state use, the parties agree that the Tribes can use their water to the extent permitted by state law, federal law, interstate compacts, and international treaties, as these treaties pertain to the appropriation, use, development, storage, regulation, allocation, conservation, exportation or quality of the water of the Colorado River and its tributaries.

Article VI - Finality of Settlement

This article describes the process of finalizing the Agreement. In 1987 the parties will present a proposed stipulation reflecting the terms of the Agreement to the Colorado District Court for Water District No. 7. The water court will then give notice and hold the appropriate hearings to rule on objections to the stipulation. The parties will request that the court not enter a final consent decree until the Tribes, the State and the United States jointly certify that the federal and state legislative enactments necessary to implement the Agreement have been obtained.

Even after the Agreement is made final and entered as a judgment of the court, the parties have agreed that the Tribe's water right and breach of trust claims on the Mancos, Animas, and La Plata Rivers can be revived if the Dolores project (for the Mancos River) or the Animas-La Plata Project (for the Animas and La Plata Rivers) is not completed.

Pursuant to the agreement, necessary enactments by Congress include: Waiver of the Non-Intercourse Act; project construction costs deferrals; project operation, maintenance and repair cost deferrals; waiver of federal reclamation law; authorization and appropriation of $49.5 million for the Tribal Development Funds; waiver of the Tribal water right claims (provided that the waiver of the claims relative to the Animas and La Plata Rivers are not final until the Animas-La Plata Project is constructed and the waiver of the claims relative to the Mancos River are not effective until the combined Highland-Towaoc Canal is constructed); and a directive to the Secretary of the Interior to comply with the administrative article.

Necessary Colorado legislative enactments include: Authorization and appropriation of $5 million to the Tribal Development Fund; authorization of the amount necessary to complete the Towaoc pipeline and domestic water distribution system; and authorization and appropriation of $5.6 million for the construction of project facilities. The Colorado General Assembly has already authorized the money necessary for the construction of the Towaoc pipeline and domestic water distribution system.

Article VI - General Provisions

The last article of this document includes miscellaneous agreements. The State agrees that the Tribes can seek additional water rights in accordance with state law; the parties reserve the right to litigate any questions not resolved by this Agreement; the parties agree that the law of abandonment will not be applied to Tribal water rights; the parties expressly reserve all rights not granted or recognized in the Agreement; the Tribes agree that if a reserved water right is recognized in this document for use on a parcel of land already irrigated under a state decree, the state decreed water right will be relinquished; the parties agree that offers or compromises made in the course of negotiation of the document can not be construed as admissions against interests or be used in any legal proceeding other one for approval and interpretation of the Agreement; the Secretary of the Interior agrees not to request reassignment of the Dolores

Water Conservancy District's water rights pursuant to their contract with the district; the Bureau of Reclamation agrees to give preference to the Tribes to design or construct the Dolores or Animas-La Plata Projects in accordance with the law; and the United States and the state disclaim any interpretation in the Agreement which can be read to commit or obligate them to expand funds which have not been appropriated or budgeted.

(Department of Interior)

Final Draft
June 27, 1986

AGREEMENT IN PRINCIPLE
CONCERNING THE
COLORADO UTE INDIAN WATER RIGHTS SETTLEMENT
AND
BINDING AGREEMENT FOR
ANIMAS-LA PLATA PROJECT COST SHARING

INTRODUCTION

The United States, the State of Colorado, the Ute Mountain Ute Indian Tribe, the Southern Ute Indian Tribe, and certain non-Indian water users have reached an agreement in principle: (i) concerning the quantification, determination, and settlement of the reserved water rights claims of the Tribes; and (ii) providing for the uniform and cooperative administration of those rights. The final water rights settlement agreement will include the provision of water to the Tribes from the Dolores Project and Animas-La Plata Project and the determination of water rights of the Tribes to various streams in southwest Colorado. On March 14, 1986, an Agreement in Principle was entered into among the numerous non-Federal entities setting forth a comprehensive settlement and quantification of these reserved water rights claims. A final settlement agreement clarifying the March 14, 1986, Agreement in Principle (including a confirmation that the water rights to be secured to the Tribes by the settlement are in recognition and fulfillment of the reserved water rights claims of the Tribes) and implementing the provisions of this agreement in principle shall be executed by the non-Federal entities and the United States on or before July 31, 1986.

The United States, the State of Colorado, certain political subdivisions of the States of Colorado and New Mexico, the Ute Mountain Ute Indian Tribe and the Southern Ute Indian Tribe have also reached and they hereby set forth a binding agreement for the cost-sharing and financing of the Animas-La Plata Project in satisfaction of the requirement of Congress in Chapter IV of Public Law 99-88 "Department of the Interior, Bureau of Reclamation, Construction Program" (99 Stat. 293, at pp. 319-320). The non-Federal entities state that they are capable of and willing to participate in project cost-sharing and financing in accordance with the terms of this agreement. The Secretary of the Interior hereby determines that the non-Federal entities' financing plan demonstrates a reasonable likelihood of the non-Federal interests' ability to satisfy the terms and conditions of this agreement as set forth herein.

This Animas-La Plata Project cost-sharing agreement is an integral part of, and is contingent upon, a final settlement of the litigation filed in Colorado District Court for Water Division No. 7 for the quantification of the reserved water right claims of the Southern Ute and Ute Mountain Ute Indian Tribes in the State of Colorado.

WATER RIGHTS SETTLEMENT

The final water rights settlement agreement will provide for, among other things, the following:

1. A consent decree to be prepared by the Colorado parties, the United States and the Tribes providing for a comprehensive quantification and determination of the reserved water right claims of the Tribes and providing for the uniform and cooperative administration of the decreed waters. This consent decree shall be submitted for approval by the District Court for Water Division No. 7, State of Colorado, and duly approved by the court on terms agreeable to the parties. Entry of a final decree shall be contingent upon enactment of legislation which:

a. Authorizes the Tribes, pursuant to the requirements of 25 U.S.C. 177, to lease or temporarily dispose of water to the extent otherwise permitted by applicable Federal and State law, interstate water compacts, and treaties.

b. Provides for deferral, without interest, of the repayment costs allocable to municipal and industrial water supplies, including operation and maintenance costs, allocated to the Tribes from the Dolores and Animas-La Plata Projects. As an increment of water is leased or otherwise used, repayment of that increment's prorata share of the allocable costs shall commence.

c. Assures that the Tribes are not restricted by application of federal Reclamation laws from using and/or leasing waters allocated to the Tribes from the Dolores and Animas-La Plata Projects.

d. Authorizes appropriation of the federal share of the $60.5 million Tribal Development Fund provided for in the settlement.

e. Provides that performance by the United States of the actions required by the aforementioned legislative provisions will be conditioned on the Tribes executing a waiver and release of all claims concerning water rights whether in rem or against any party to the settlement other than those which may arise under the terms of the settlement.

The parties contemplate that other enactments, as needed but not enumerated herein, will be drafted by the parties and proposed to the Congress.

2. The creation of Tribal Development Funds for the Tribes, with $20.0 million for the Southern Ute Tribe and $40.5 million for the Ute Mountain Ute Tribe, said funds to be created as follows:

a. $5.0 million to be deposited by the State of Colorado, contingent upon appropriation by the Colorado General Assembly, to the Tribal Development Funds no later than 30 days following the deposit of the first installment of Federal monies to said Development Funds.

b. Such amount as needed, estimated at $6.0 million, to be expended by the State of Colorado for construction of the Towaoc pipeline and domestic water distribution system for the Ute Mountain Ute Tribe as a credit to the Ute Mountain Ute Development Fund. Said construction will be initiated within one year of the execution of the final settlement agreement, and shall be completed within one year of the initiation of construction.

c. $49.5 million to be provided by the Secretary to the Tribal Development Funds in three annual installments beginning in the first year for which the Congress of the United States appropriates such monies, as follows: $19.5 million in year 1; $15 million in year 2; and $15 million in year 3. The Secretary will annually deposit such monies to the Development Funds within 30 days following the availability of such annual appropriation by the Congress to the Secretary.

In consideration for the Ute Mountain Ute Tribe's agreement to accept delayed payment of the Federal contribution to its Tribal Development Fund, the Secretary of the Interior, the State of Colorado, and the Ute Mountain Ute Tribe shall use their best efforts to acquire for the Ute Mountain Ute Tribe, for recrection purposes, not less than 100 acres of land with access to McPhee Reservoir of the Dolores Project from lands which had been recently transferred from the Department of the Interior to the Department of Agriculture.

3. Appropriate finality provisions to protect Federal, Tribal, and State interests in the settlement.

ANIMAS-LA PLATA COST SHARING AGREEMENT

Cost sharing and financing of the Animas-La Plata Project shall be as follows:

1. The facilities of the project, or mutually acceptable alternatives, shall be constructed in two phases as identified below:

Phase One Facilities

Ridges Basin Dam and Reservoir
Durango Pumping Plant
Ridges Basin Inlet Conduit
Ridges Basin Pumping Plant and Transmission Facilities
Long Hollow Tunnel
Durango Municipal and Industrial Pipeline
Shenandoah Pipeline
Recreation, Fish and Wildlife and Cultural Resources Phase One
Dry Side Canal Phase One
Operation and Maintenance Facilities Phase One
Southern Ute Inlet (partial)
Southern Ute Diversion Dam
Red Mesa Pumping Plant, Laterals and Transmission Facilities
Alkali Gulch Laterals Phase One
La Plata New Mexico Laterals Phase One
Dry Side Laterals Phase One
Drains Phase One
New Mexico Interim Facilities

Phase Two Facilities

Southern Ute Dam and Reservoir
Southern Ute Inlet (partial)
New Mexico Irrigation Canal
Ute Mountain Ute Pumping Plant, Laterals, and Transmission Facilities
Drains Phase Two
Recreation, Fish and Wildlife and Cultural Resources Phase Two
Dry Side Canal Phase Two
Alkali Gulch Laterals Phase Two
Alkali Gulch Pumping Plant and and Transmission Facilities
Dry Side Laterals Phase Two
La Plata New Mexico Laterals Phase Two
Operation and Maintenance Facilities Phase Two
Southern Ute Pumping Plant, Laterals, and Transmission Facilities
Third Terrace Pumping Plant and Transmisssion Facilities
La Plata Diversion Dam

Contingent upon appropriations by the Congress, Phase One facilities shall be constructed by the Bureau of Reclamation within a period of not less than 12 years from the date of this agreement. Phase Two facilities will be constructed by one or more of the non-federal entities signatory to this agreement on such schedules as they deem practicable.

2. As part of their non-federal contributions, the non-Federal entities agree to non-federally finance the Phase Two facilities listed above. Until the completion of Phase Two facilities, this phasing of facilities has the effect of making the Southern Ute Tribe's municipal and industrial water and the Ute Mountain Ute Tribe's municipal and industrial and irrigation water available at Ridges Basin Reservoir. In addition, it has the effect of deferring the irrigation of 10,700 acres of full service land in Colorado and the irrigation of 1,900 acres of full service land in New Mexico.

3. Construction of Phase One facilities will be financed as follows:

a. $30 million contribution to be deposited by the Colorado Water Resources and Power Development Authority, less the amount not to exceed $75,000 to be spent by the Authority for the surface geology survey in 1986, into an escrow account within 30 days following the initiation of irreversible construction or preconstruction activities by the Secretary for the development of Phase One of the Animas-La Plata Project. Escrow funds, including interest earned thereon, will be available on demand by the Secretary to fund no more than twenty percent of the total estimated Phase One development costs in any year.

b. $7.3 million to be provided by the Animas-La Plata Water Conservancy District in a lump-sum payment to the Secretary no later than September 30 of the year prior to the year in which the Secretary declares that municipal and industrial water is expected to be available to non-Indian beneficiaries in Colorado. Allocable costs in excess of $7.3 million attributable to inflation will be repayable pursuant to a repayment contract between the Secretary and the District with such escalation for inflation of materials and labor costs not to exceed 30 percent. Escalation of overhead costs will be treated in accordance with paragraph 6 below.

c. $75,000 to be provided by the Animas-La Plata Water Conservancy District in payments of $5,000 per year, payable on or before October 1 of each year, commencing the first year the Secretary expends funds for the Animas-La Plata Project.

d. $50,000 to be provided by Montezuma County to the Secretary in a lump-sum payment within 30 days following initiation of irreversible construction activities by the Secretary for Phase One.

e. An estimated $12.8 million, to be provided by the San Juan Water Commission through the agency of San Juan County, will be available to the Secretary to fund the estimated annual cost of developing the New Mexico non-Indian municipal and industrial water share of the Phase One facilities, such funds to be provided on a schedule of applicable actual costs related to New Mexico municipal and industrial water facilities. Allocable costs in excess of $12.8 million attributable to inflation will be repayable pursuant to a repayment contract between the Secretary and the San Juan Water Commission with such escalation for inflation of materials and labor costs not to exceed 30 percent. Escalation of overhead costs will be treated in accordance with paragraph 6 below.

f. $5.6 million to be provided by the State of Colorado, contingent upon appropriations by the Colorado General Assembly, to the Secretary for Ridges Basin Dam. Such funds shall be provided on a schedule acceptable to Colorado and the Secretary beginning in the first year of construction of said dam.

g. All other funds needed to satisfactorily complete construction of the Phase One facilities shall be provided by the United States, contingent upon appropriations by the Congress.

4. No expenditure of federal funds by the Secretary will be made for irreversible construction actions or activities in the development of the Animas-La Plata Project prior to passage of the legislation enumerated in Paragraph One under the heading Water Rights Settlement and prior to implementation of 30-year straight-line repayment of those costs of the Animas-La Plata Project to be repaid by Colorado River Storage Project power revenues.

5. Repayment contracts must be executed by Indian and non-Indian beneficiaries of the Animas-La Plata Project with the Secretary of the Interior for repayment of the reimbursable costs of the project. In determining the reimbursable costs of the Project, the financial contributions of the non-federal entities to the construction of Phase One facilities shall be credited to the allocable costs of each project function as follows:

Function	Amount ($ millions)
New Mexico Non-Indian Municipal and Industrial	$ 12.8
Colorado Non-Indian Municipal and Industrial	$ 12.9
Colorado Non-Indian Irrigation	$ 37.625

6. The repayment contracts will include provisions to recover any escalation of construction costs for Phase One facilities. In negotiating the escalation provisions, consideration will be given to fixing overhead costs charged to the Animas-La Plata Project by the Secretary.

7. All operation, maintenance and replacement costs not deferred under legislation will be borne by the non-Federal entities under the provisions of repayment contracts, subject to applicable Reclamation Law.

8. Any use of water other than that contemplated in the Final Environmental Impact Statement for the Animas-La Plata Project shall be subject to compliance with the National Environmental Policy Act.

Dated this 30th day of June, 1986.

This contract may be executed in any number of counterparts, all of which together shall constitute one original agreement.

IN WITNESS THEREOF, the parties hereto have caused this agreement to be executed as of the date first above written by their respective officers and representatives, and warrants that each is duly authorized by the respective entity to execute this agreement which shall bind the parties hereto, their successors and assigns.

For the State of Colorado

Duane Woodard
For the State of Colorado

For the Colorado Water Resources
and Power Development Authority

Chris A. Baker
For the Southern Ute Indian Tribe

John E Murphy
For the Animas-La Plata Water
Conservancy District

For the Ute Mountain Ute Indian
Tribe

For the New Mexico Interstate
Stream Commission

For the San Juan Water Commission

For Montezuma County

For the Secretary of the Interior

Dated this 28th day of June, 1986.

This contract may be executed in any number of counterparts, all of which together shall constitute one original agreement.

IN WITNESS THEREOF, the parties hereto have caused this agreement to be executed as of the date first above written by their respective officers and representatives, and warrants that each is duly authorized by the respective entity to execute this agreement which shall bind the parties hereto, their successors and assigns.

For the State of Colorado

For the State of Colorado

For the Colorado Water Resources and Power Development Authority

For the Southern Ute Indian Tribe

For the Animas-La Plata Water Conservancy District

For the Ute Mountain Ute Indian Tribe

For the New Mexico Interstate Stream Commission

For the San Juan Water Commission

For Montezuma County

For the Secretary of the Interior

Dated this _____ day of June, 1986.

This contract may be executed in any number of counterparts, all of which together shall constitute one original agreement.

IN WITNESS THEREOF, the parties hereto have caused this agreement to be executed as of the date first above written by their respective officers and representatives, and warrants that each is duly authorized by the respective entity to execute this agreement which shall bind the parties hereto, their successors and assigns.

For the State of Colorado

For the State of Colorado

For the Colorado Water Resources
and Power Development Authority

For the Southern Ute Indian Tribe

For the Animas-La Plata Water
Conservancy District

Ernest House
For the Ute Mountain Ute Indian
Tribe

For the New Mexico Interstate
Stream Commission

For the San Juan Water Commission

For Montezuma County

For the Secretary of the Interior

Dated this 30th day of June, 1986.

This contract may be executed in any number of counterparts, all of which together shall constitute one original agreement.

IN WITNESS THEREOF, the parties hereto have caused this agreement to be executed as of the date first above written by their respective officers and representatives, and warrants that each is duly authorized by the respective entity to execute this agreement which shall bind the parties hereto, their successors and assigns.

For the State of Colorado

For the State of Colorado

For the Colorado Water Resources and Power Development Authority

For the Southern Ute Indian Tribe

For the Animas-La Plata Water Conservancy District

For the Ute Mountain Ute Indian Tribe

For the New Mexico Interstate Stream Commission

For the San Juan Water Commission

Thomas K. Colbert
For Montezuma County

For the Secretary of the Interior

Dated this 30th day of June, 1986.

This contract may be executed in any number of counterparts, all of which together shall constitute one original agreement.

IN WITNESS THEREOF, the parties hereto have caused this agreement to be executed as of the date first above written by their respective officers and representatives, and warrants that each is duly authorized by the respective entity to execute this agreement which shall bind the parties hereto, their successors and assigns.

For the State of Colorado

For the State of Colorado

For the Colorado Water Resources
and Power Development Authority

For the Southern Ute Indian Tribe

For the Animas-La Plata Water
Conservancy District

For the Ute Mountain Ute Indian
Tribe

For the New Mexico Interstate
Stream Commission

Wm B English

For the San Juan Water Commission

For Montezuma County

For the Secretary of the Interior

Dated this 30th day of June, 1986.

This contract may be executed in any number of counterparts, all of which together shall constitute one original agreement.

IN WITNESS THEREOF, the parties hereto have caused this agreement to be executed as of the date first above written by their respective officers and representatives, and warrants that each is duly authorized by the respective entity to execute this agreement which shall bind the parties hereto, their successors and assigns.

For the State of Colorado

For the State of Colorado

For the Colorado Water Resources and Power Development Authority

For the Southern Ute Indian Tribe

For the Animas-La Plata Water Conservancy District

For the Ute Mountain Ute Indian Tribe

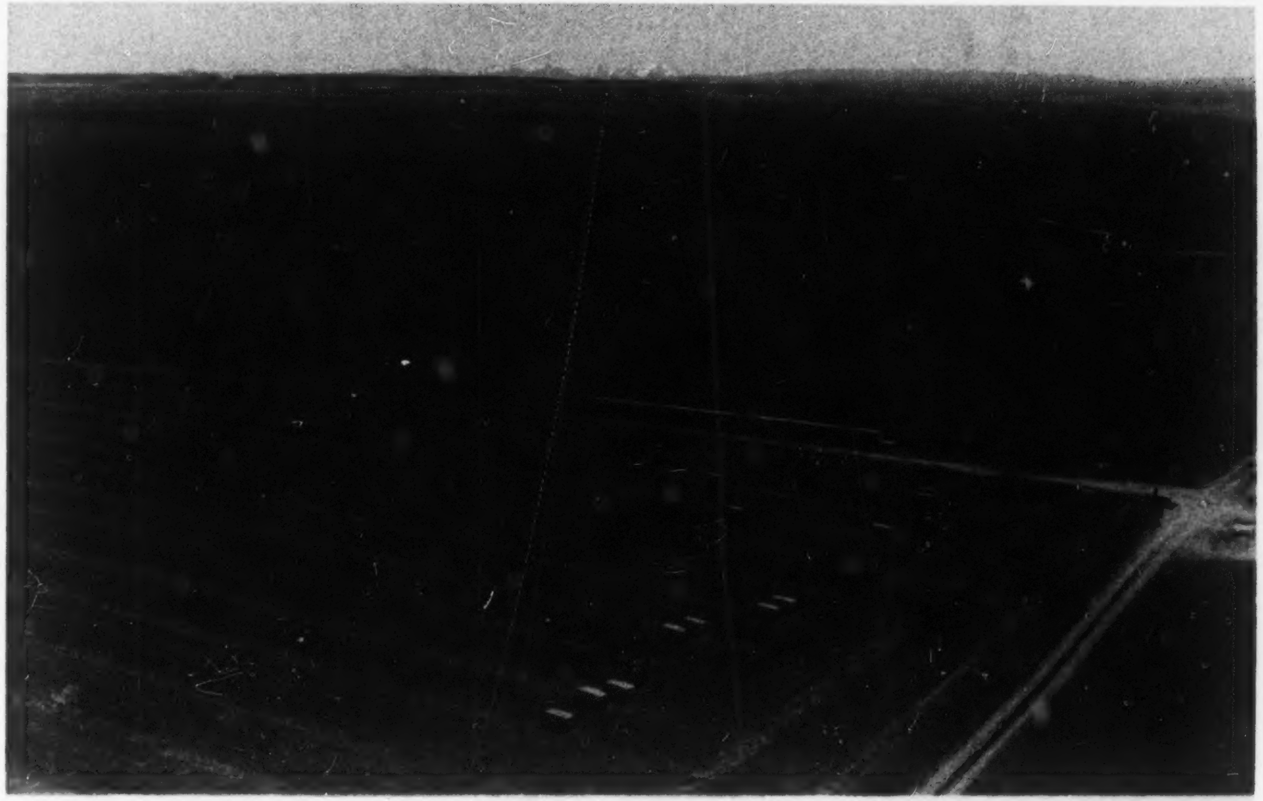
S E Reynolds

For the New Mexico Interstate Stream Commission

For the San Juan Water Commission

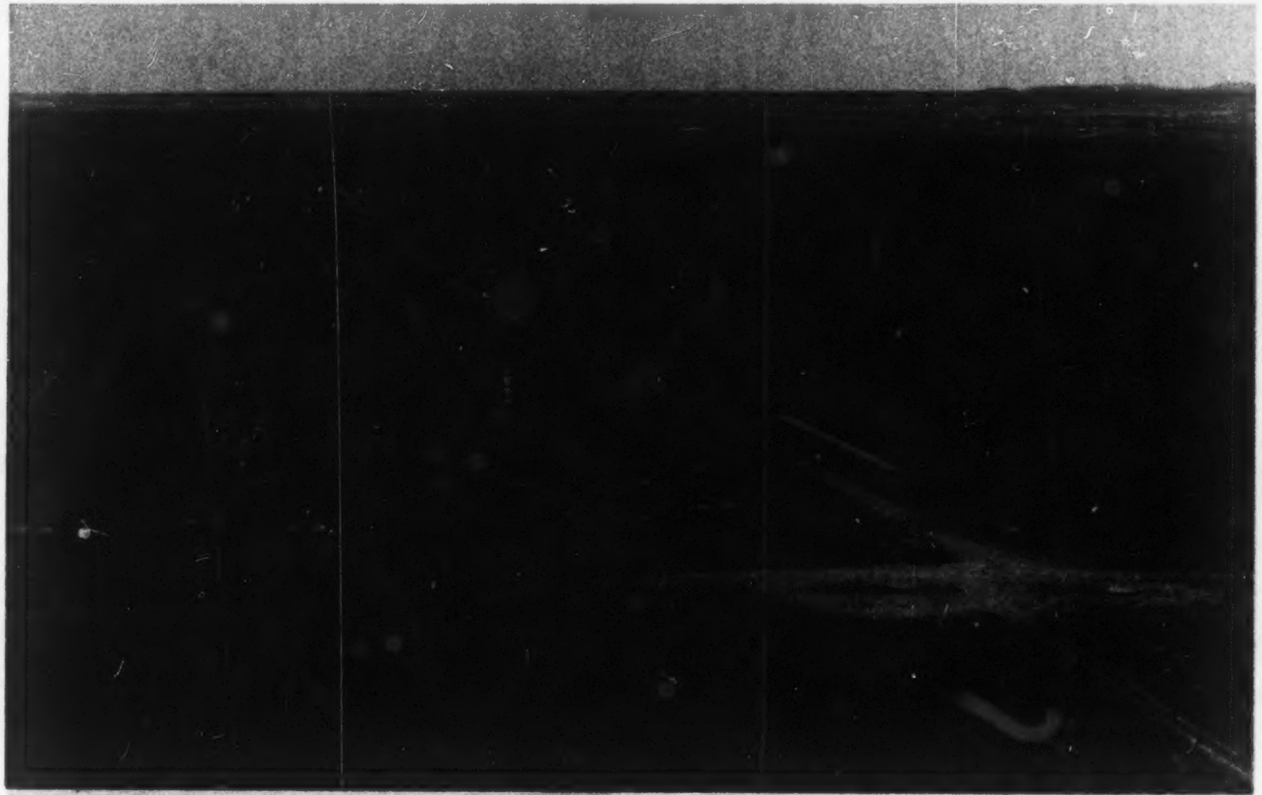
For Montezuma County

For the Secretary of the Interior



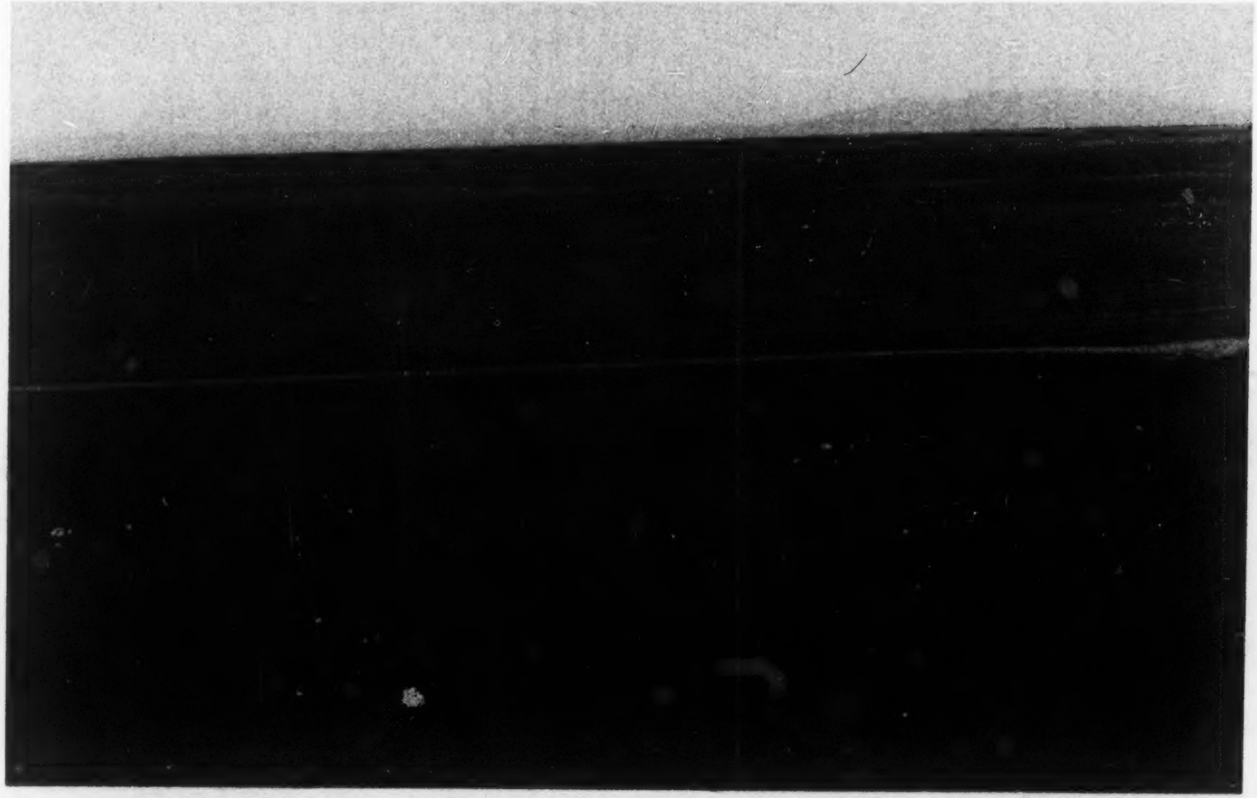
Solicitation/Specification
4-CC-40-02290/DC-7619

CN71-438-33392 NA
Dolores Project, Colorado, Aerial, Fairview Laterals
Southeast view shows a vivid contrast between an alfalfa field that has been irrigated with Project water and one that has not. First cutting of hay has been taken from both.
07/02/87 USBR photo taken by J. Fleetman



Solicitation/Specification
4-CC-40-02290/DC-7619

CN71-438-33393 NA
Dolores Project, Colorado, Aerial, Fairview Laterals
Easterly view shows a vivid contrast between an alfalfa field that has been irrigated with Project water and one that has not. First cutting of hay has been taken from both.
07/02/87 USBR photo taken by J. Fleetman



Solicitation/Specification
4-CC-40-02290/DC-7619

CN71-43B-33395 NA
Dolores Project, Colorado, Aerial, Fairview Laterals
West view shows a vivid contrast between an alfalfa field that has been irrigated with Project water and one that has not. First cutting of hay has been taken from both.
07/02/87 USBR photo taken by J. Fleetman